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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 KENNETH NESMITH, on behalf of himself
and other similarly situated employees in the
11 State of California,

12 Plaintiff,

13 v.

14 RCS SAFETY, LLC., DBA ROADWAY
CONSTRUCTION SERVICE, and DOES 1
15 through 50 inclusive,

16 Defendant.
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Case No.: 23STCV18913

*[Assigned for All Purposes to the Hon. William F.
Highberger, Dept. 10]*

**DECLARATION OF HALI M. ANDERSON IN
SUPPORT OF PLAINTIFF'S MOTION FOR:
(1) PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT; (2)
PROVISIONAL CERTIFICATION OF THE
SETTLEMENT CLASS; (3) APPROVAL OF
CLASS NOTICE AND NOTICE PLAN; (4)
APPOINTMENT OF CLASS COUNSEL AND
CLASS REPRESENTATIVE; (5)
APPOINTMENT OF SETTLEMENT
ADMINISTRATOR; AND (6) SETTING A
FINAL APPROVAL HEARING**

Date: February 28, 2025
Time: 11:00 a.m.
Dept: 10
Judge: Hon. William F. Highberger

Amended Complaint Filed: October 2, 2023
Complaint Filed: August 9, 2023
Trial Date: None set

1 I, Hali M. Anderson, declare as follows:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am a shareholder of the law firm GrahamHollis, APC in San Diego, California. Samara A. Bahu and I are
4 the primary attorneys from my firm handling this case. I am thoroughly familiar with, and have personal
5 knowledge of, all of the facts set forth herein. If called as a witness, I could and would competently testify
6 to the information set forth below.

7 2. I submit this declaration in support of Plaintiff Kenneth Nesmith's ("Plaintiff") Unopposed
8 Motion for Preliminary Approval of Class Action and PAGA Action Settlement, which seeks an order:
9 (1) preliminarily approving the proposed Settlement; (2) provisionally certifying the Settlement Class;
10 (3) approving the form and content of the Class Notice; (4) appointing Plaintiff as Class Representative
11 and GrahamHollis, APC as Class Counsel; (5) appointing Apex Class Action, LLC as the Settlement
12 Administrator; and (6) setting a Final Approval Hearing.

13 3. A true and correct copy of the fully executed Class Action and PAGA Settlement
14 Agreement and Class Notice ("Settlement," "Settlement Agreement," or "SA") is attached as **Exhibit 1**.
15 The Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval
16 ("Class Notice" or "Notice") is attached as Exhibit A to the Settlement Agreement.

17 4. On July 27, 2023, prior to filing this action, Plaintiff provided a notice letter to the
18 California Labor and Workforce Development Agency ("LWDA") and to Defendant RCS Safety, LLC
19 dba Roadway Construction Service ("Defendant") outlining Plaintiff's claims and legal theories, in
20 compliance with California Labor Code section 2699.3. A true and correct copy of said notice is attached
21 to this Declaration as **Exhibit 2**.

22 5. Plaintiff also provided the LWDA with notice and a copy of the Settlement Agreement via
23 online submission on February 4, 2025. A true and correct copy of confirmation of submission of the
24 Settlement to the LWDA is attached to this Declaration as **Exhibit 3**.

25 6. I am not aware of any class, representative, or other collective action in any other court in
26 this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class
27 or group of individuals who would also be members of the class defined in this action.

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CLASS COUNSEL'S CLASS ACTION EXPERIENCE

7. Over the past ten years, my firm has been appointed as class counsel and received adequate and fair settlements in over 150 action lawsuits in the district and state courts of California with claims similar to those presented here. A list of the cases in which my firm has settled for Plaintiff in wage and hour employment actions pending throughout California is attached hereto as **Exhibit 4**.

8. I was admitted to the California State Bar in December 2008. Throughout my entire career, I have practiced employment law exclusively and worked on numerous wage and hour class actions. I have represented employees since September 2018. I currently serve as plaintiff's counsel in the following class and representative actions: *Dochtermann v. HI. Q*, Superior Court for the County of San Diego (litigation ongoing); *Orosz, et al. v. Briarwood Post Acute, LLC*, Superior Court for the County of Sacramento (litigation ongoing); *Stewart v. Quest Diagnostics*, United States District Court for the Southern District (litigation ongoing); *Jimenez v. Mattress and Furniture Express*, Superior Court for the County of Sacramento (litigation ongoing); *Ley v. Ace Hardware*, Superior Court for the County of Sacramento (litigation ongoing); *Mittendorff v. Bxng Club*, Superior Court for the County of San Diego (litigation ongoing); *Santiago v. Security Industry Specialists*, Superior Court for the County of San Diego (litigation ongoing); *Allen v. Networx Supported Living Services*, Superior Court for the County of San Diego (litigation ongoing); *Arong v. Integra Beauty*, Superior Court for the County of Los Angeles (litigation ongoing); *Artibee v. Corelogic Credco*, Superior Court for the County of San Diego (litigation ongoing); *Bernardo v. First Element Fuel*, Superior Court for the County of Orange (litigation ongoing); *Boucher v. Unstoppable Automotive AMV*, Superior Court for the County of Orange (litigation ongoing); *Bowens v. Trestles*, Superior Court for the County of Sacramento (litigation ongoing); *Carrillo v. DMSD Restaurants*, Superior Court for the County of San Diego (litigation ongoing); *Cooper v. Thomas Cuisine Management*, Superior Court for the County of Fresno (litigation ongoing); *Gonzalez v. Rolling Hills*, Superior Court for the County of Los Angeles (litigation ongoing); *Hargrove v. Doctors Weight Clinic*, Superior Court for the County of San Diego (litigation ongoing); *Mabalot v. Healthsource*, Superior Court for the County of San Diego (litigation ongoing); *Walker v. Healthsource*, Superior Court for the County of Santa Clara (litigation ongoing); *Johnson v. GB Auto Service*, Superior Court for the County of San Diego (litigation ongoing); *Lopez v. Foley Family Wines*, Superior Court for the County of Sonoma

(litigation ongoing); *Minor v. Essential Staffing*, Superior Court for the County of Sacramento (litigation ongoing); *Minor v. Top Flight Registry*, Superior Court for the County of Sacramento (litigation ongoing); *Minor v. Twomagnets*, Superior Court for the County of Alameda (litigation ongoing); *Quiroz v. Prestige Gunite*, Superior Court for the County of Contra Costa (litigation ongoing); *Sanabia v. GP Development*, Superior Court for the County of Sacramento (litigation ongoing); and *Sy v. Pacific Rim*, Superior Court for the County of San Diego (litigation ongoing).

9. In addition, I have served as class and/or representative counsel in the following cases: *Bechere v. Ralphs Grocery Company*, Superior Court for the County of Alameda; *Gray v. Armstrong*, Superior Court for the County of Alameda; *McGough v. Love's Travel Stop & Country Stores, Inc.*, Superior Court for the County of Kern; *Abella v. GHC of SAC-SNF LLC*, et al., Superior Court for the County of Sacramento; *Twombly v. Del Frisco's*, Superior Court for the County of San Diego; *Lee v. Sutter Health Foundation*, Superior Court for the County of Alameda; *Moreno v. Providence Group, Inc.*, Superior Court for the County of San Diego; *Valentine v. Santa Monica Rehabilitation Center*, et al., Superior Court for the County of San Diego; *Valentine v. Santa Monica Rehabilitation Center*, et al., United States District Court for the Central District; and *Trento v. US Security Associates*, Superior Court for the County of Alameda; *Carson v. Downtown San Diego Partnership*, Superior Court for the County of San Diego; *Fernandez v. Prime Healthcare Services, Inc.*, Superior Court for the County of Los Angeles; *Lee v. Sutter Bay Medical Foundation*, Superior Court for the County of Alameda; *Headley, et al. v. Professional Maintenance Systems*, Superior Court for the County of San Diego; *Muniz v. Sutter Valley Hospitals*, Superior Court for the County of Sacramento; *Taylor v. Penske Logistics*, United States District Court for the Central District; *Taylor v. Penske Logistics*, Superior Court for the County of San Bernardino; *Dew v. Minegar Contracting, et al.*, Superior Court for the County of San Diego; *Cooper v. Thomas Cuisine*, Superior Court for the County of Fresno; *Edwards v. Absolute Senior Solutions*, Superior Court for the County of Santa Clara; *Figueroa v. Indigo Sky*, Superior Court for the County of Los Angeles; *Rodriguez v. Camden Security*, Superior Court for the County of Alameda; *Saruca v. Palacek Imports, Inc.*, Superior Court for the County of Contra Costa; and *Gnaedig v. Favorite Healthcare Staffing, et al*, Superior Court for the County of Los Angeles.

10. Samara Bahu was admitted to the California State Bar in November of 2023. Prior to her

admission to the bar, Ms. Bahu worked as a law clerk at GrahamHollis APC, gaining significant experience in employment wage and hour matters.

11. My colleagues and I have considerable experience handling complex wage and hour class action cases with claims similar to those asserted in this action and have successfully represented tens of thousands of employees in state and federal court cases throughout California.

CASE BACKGROUND AND PROCEDURAL HISTORY

12. On July 27, 2023, Plaintiff sent written notice to the LWDA and Defendant of Defendant's alleged violations of the California Labor Code ("Labor Code").

13. On August 9, 2023, Plaintiff filed the initial complaint in this litigation (the "Action") in the Superior Court for the County of Los Angeles. The complaint alleged causes of action on a class-wide basis against Defendant for (1) Failure to Provide Meal Periods, (2) Failure to Provide Rest Periods, (3) Failure to Provide Heat Recovery Periods; (4) Failure to Pay All Minimum, Regular and Overtime Wages; (5) Failure to Indemnify All Necessary Expenditures; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Timely Pay All Wages Due Upon Separation of Employment; (8) Violation of California Business & Professions Code §§ 17200, *et seq.*; (9) Retaliation (individual); and (10) Wrongful Termination in Violation of Public Policy (individual).

14. On October 2, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). The First Amended Complaint is the operative complaint in the Action. *Id.*

15. Plaintiff is a former non-exempt employee who worked for Defendant as a Traffic Control Tech II from July 7, 2022, to May 12, 2023. Plaintiff's job duties included directing street traffic around construction sites, closing streets during construction, and providing detour routes at various sites throughout the Los Angeles County area. During his time of employment, Plaintiff earned \$26.18 per hour and typically worked over 40 hours per week.

16. Defendant is a California corporation headquartered in Montebello, California. Defendant specializes in traffic control services, including traffic control planning, providing traffic safety barricade services, and performing traffic control flagging services.

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1 17. The Parties agreed to attend a mediation, which was scheduled for September 9, 2024, with
2 David Rotman, Esq., a well-respected, neutral third-party mediator who is experienced in wage and hour
3 class action cases similar to this Action.

4 18. Prior to mediation, the Parties engaged in an exchange of informal discovery. The Parties
5 agreed to use a *Belaire-West* notice process. Following the completion of this process, Plaintiff received
6 the contact information for 342 employees, along with their job titles and dates of employment. In addition
7 to the contact information, Defendant provided Plaintiff with its written policies and procedures—
8 including those governing compensation and meal and rest periods—and a sample of timekeeping and
9 payroll records for 20% of the non-exempt employees during the class period.

10 19. The information produced allowed the Parties’ respective counsel to go to mediation well
11 prepared to intelligently discuss all aspects of the case, including the relative strengths and weaknesses of
12 the claims, the risks and delays of further litigation, the current state of the law as it related to the claims,
13 the competing valuations of Plaintiff’s potential class-wide damages, and the likelihood of obtaining and
14 maintaining class certification.

15 20. At the mediation, the Parties engaged in good-faith and non-collusive negotiations,
16 exchanged additional information regarding the realistic damages exposure to Defendant, the relative
17 strengths and weaknesses of the claims, the risks and delays of further litigation, the current state of the
18 law as it related to the claims, and the potential difficulty in maintaining class certification of each of the
19 claims. The mediator Mr. Rotman helped to manage the Parties’ expectations and provided a useful,
20 neutral analysis of the issue and risks to both sides.

21 21. With the help of Mr. Rotman, the Parties reached a resolution at mediation through a
22 mediator’s proposal, resulting in the settlement of the action. Subsequently, the Parties entered into a
23 Memorandum of Understanding outlining the basic terms of the tentative settlement subject to the
24 preparation and execution of a comprehensive Settlement Agreement, which was fully executed by the
25 Parties on January 13, 2025.

26 **CLASS COUNSEL’S INVESTIGATION OF THE CLASS AND PAGA CLAIMS**

27 22. Prior to filing the Complaint in this action, my firm conducted a thorough investigation
28 into the merits of the claims and the applicable law related thereto. My firm requested Plaintiff’s

1 employment file from Defendant and spent a significant amount of time reviewing his employment
2 records, including applicable policy documents and other documents signed by Plaintiff during his time
3 of employment, pay records, timecards, and other records.

4 23. Around December of 2023, counsel for the Parties began discussing the possibility of an
5 early mediation and exchanging the names of potential mediators as well as discussing the necessary
6 documents and information that would need to be exchanged in order to ensure a productive mediation
7 session.

8 24. With the information Defendant provided, my firm conducted a thorough investigation
9 into the merits and legal basis of the claims and performed significant legal research with respect to the
10 applicable law and potential defenses raised by Defendant to the claims.

11 25. My firm's investigation allowed us to prepare a complete liability analysis and potential
12 exposure to Defendant if Plaintiff succeeded on all claims at trial, which were measured against the
13 relative strength of the claims in order to better identify an appropriate range of settlement figures. This
14 analysis was based on information represented in Defendant's records, which allowed my firm to calculate
15 the average number of shifts worked per pay period, the average number of employees employed at any
16 given time, Class Members' average rates of pay, the estimated violation rates for each claim, the amount
17 of any unpaid wages, and the average shift length, among other relevant data.

18 26. I believe that the documents and information exchanged and analyzed by the Parties in
19 preparation for mediation, as well as the Parties' discussions during mediation, are sufficient for the Parties
20 to make an informed decision about a fair resolution of this action at this time.

21 **CLASS COUNSEL'S EVALUATION OF THE CLASS AND PAGA CLAIMS FOR**
22 **SETTLEMENT PURPOSES**

23 27. I believe the Settlement provides a real and meaningful benefit to the Class Members
24 considering the disputed nature of the claims, the risk of maintaining class certification, and the expense
25 of continued litigation. Our determination of a fair value of the Settlement was based on a number of
26 factors, including our investigation of the applicable law as it applied to the facts discovered, the suitability
27 of the case for class treatment, Plaintiff's claims and the associated damages, and Defendant's potential
28 defenses to liability and damages.

28. Throughout this case, Defendant has consistently maintained that it complied with California law by: (1) providing employees with the opportunity to take all required meal, rest, and recovery periods; (2) properly calculating and paying all minimum, regular, and overtime wages; (3) indemnifying employees for all necessary business expenses; (4) maintaining accurate employment records; (5) issuing accurate itemized wage statements; and (6) timely paying all wages due upon separation of employment, including any applicable waiting time penalties. For these reasons, Defendant also maintained that it did not violate Business and Professions Code section 17200 *et seq.* or the PAGA.

29. It is my understanding that Defendant contends that it maintained valid policies, practices, and procedures that complied with California law at all times concerning meal periods. Defendant produced several purported meal period waiver agreements signed by Class Members which waived meal periods for shifts under six hours long and waived a second meal period for shifts longer than 10 hours but under 12 hours long. Defendant contends that said meal break waivers were routinely executed by Class Members. As such, Class Members' meal break claims would be limited to shifts that exceeded six (rather than five) hours. As a result, this would have reduced the number of potential meal premiums recoverable in this action.

30. Defendant similarly contends that it provided all meal periods and rest periods to which employees were entitled and that employees were relieved of all duties during these meal periods and rest periods. Defendant is further likely to contend that any employees who performed duties during their meal and rest breaks did so by their own choice and without Defendant's knowledge. Defendant contends such conduct violated a lawful company policy.

31. Additionally, Plaintiff's meal and rest break claims are largely premised on the theory that Class Members were forced to skip meal periods and rest periods because they often worked with only one other person. Plaintiff also alleges that Class Members timesheets lacked any designated space to record their meal periods, leading to a presumption that employees were not provided with compliant meal periods. Defendant contends that it maintained lawful meal and rest period policies, provided sufficient staffing to allow employees to take breaks, and that the absence of recorded meal periods does not necessarily indicate noncompliance, as employees may have voluntarily waived their breaks or failed to record them despite being provided the opportunity to do so. As a result, Plaintiff would have similarly

1 faced challenges in obtaining the full amount of recovery and maintaining class certification.

2 32. Defendant is also likely to argue that it provided recovery periods. During mediation,
3 Defendant asserted that Class Members could take breaks in their air-conditioned vehicles. Defendant is
4 further expected to argue that the temperatures varied across worksites.

5 33. Defendant is further likely to contend that it properly calculated and paid all minimum,
6 regular, and overtime wages for all hours worked as required by California law.

7 34. Defendant is further likely to contend that, to the extent that Plaintiff and Class Members
8 received wage statements that were allegedly inaccurate, Plaintiff and Class Members suffered no actual
9 damage or harm as a result.

10 35. With respect to the waiting time penalties claim, Defendant is likely to contend that its
11 good-faith belief in the use of their timekeeping and payroll practices and their reliance on Class Members
12 to keep accurate records of their hours worked precludes the imposition of any waiting time penalties
13 since Plaintiff will not be able to prove that Defendant's alleged failure to pay all wages at the time of
14 Plaintiff's and Class Members' separation of employment with Defendant was "willful."

15 36. It is also my understanding that Defendant contends that class certification is not
16 appropriate. Defendant will likely argue that individualized inquiries predominate over common questions
17 of law and fact because Class Members worked in varying environments, in teams of different sizes across
18 the state, and under different expectations depending on their specific work locations. Such considerations
19 do in fact pose a substantial obstacle for Plaintiff to maintain his meal and rest period claims on a
20 class-wide basis, as well as an obstacle to establishing the full value of Plaintiff's estimated damages for
21 these claims at trial.

22 37. Defendant is further likely to claim that it did not engage in any Labor Code or Wage Order
23 violations, and therefore, Plaintiff will not be able to show Defendant engaged in any "unlawful, unfair or
24 fraudulent business act or practice," or that Defendant is liable for civil penalties under the Labor Code or
25 statutory penalties under PAGA.

26 38. Plaintiff believes that the class claims are meritorious, and that class certification is
27 appropriate as to all of the claims alleged in the litigation.

28 39. Plaintiff's maximum-possible damages exposure explained below assumed that class

1 certification would be granted and assumed that Plaintiff would prevail on all claims at trial and recover
2 the full amount of the estimated damages, including all potential civil penalties. Accordingly, the
3 estimated value and analysis of Plaintiff's and Class Members' claims at the mediation was premised on
4 an inflated, "everything goes right" scenario for each claim, for a maximum class-wide damages exposure
5 of approximately \$13,059,707.20. However, the possibility of recovering such a large amount is remote,
6 particularly in light of the relative strength of Defendant's defenses, and the likelihood of obtaining and
7 maintaining class certification of all claims through trial.

8 **Plaintiff's Meal and Rest Break Claims**

9 40. Plaintiff's damages estimate for his claim that Defendant failed to provide meal periods,
10 without interest, totaled approximately \$2,092,965. Plaintiff's damages estimate for the rest period claim,
11 without interest, totaled approximately \$2,250,500. Plaintiff's and Class Members' meal and rest break
12 claims are premised on the theory that Defendant's written requirements state that employees must be
13 available by phone at all times. Furthermore, Defendant only assigned two technicians to a job site, making
14 it impossible for Class Members to leave their positions to take meal and rest breaks. Therefore, Plaintiff
15 contends that Defendant's policies and practices resulted in Class Members receiving late, short, or
16 otherwise non-compliant meal periods, and that Class Members were not authorized or permitted to take
17 rest periods.

18 41. Plaintiff's damage calculations for the meal and rest break claims used the average hourly
19 rate of pay across the Class Period as the one-hour of wages owed as the premium for each non-compliant
20 meal and rest period. Plaintiff alleges these premium wages were never paid for non-compliant meal or
21 rest periods. To estimate the amount of damages for the meal period claim, Plaintiff multiplied the average
22 hourly rate of pay (\$25.72), by the average number of shifts worked per weekly pay period by each
23 employee (5 shifts), by the percentage of shifts worked that were longer than 5 hours (93%), by the
24 estimated violation rate (100%), by the estimated total number of pay periods during the Class Period
25 (17,500):

26 \$25.72 (average hourly rate)

27 x 5 (average number of shifts per pay period)

28 x 93% (percentage of shifts longer than five hours)

$$\begin{aligned}
 & \times 100\% \text{ (estimated violation rate)} \\
 & \times 17,500 \text{ (total number of pay periods in the Class Period)} \\
 & = \$2,092,965 \text{ (estimated amount for unpaid meal period premiums)}
 \end{aligned}$$

42. Similarly, Plaintiff's estimate for unpaid rest period premium wages used the average hourly rate of pay (\$25.72) multiplied by the average number of shifts worked per pay period by each employee (5 shifts), by the percentage of shifts worked that were longer than 3.5 hours (100%), by the estimated violation rate (100%), by the estimated total number of pay periods during the Class Period (17,500):

$$\begin{aligned}
 & \$25.72 \text{ (average hourly rate)} \\
 & \times 5 \text{ (average number of shifts per pay period)} \\
 & \times 100\% \text{ (percentage of shifts longer than 3.5 hours)} \\
 & \times 100\% \text{ (estimated violation rate)} \\
 & \times 17,500 \text{ (total number of pay periods in the Class Period)} \\
 & = \$2,250,500 \text{ (estimated amount for unpaid rest period premiums)}
 \end{aligned}$$

43. Defendant disputes its liability for meal and rest break violations that Plaintiff and Class Members suffered because it claims that it provided Plaintiff and Class Members with legally compliant meal and rest breaks. Defendant asserts that it complied with California law at all times concerning meal periods and that Class Members were relieved of all duties during their meal breaks. Defendant similarly contends that Plaintiff and Class Members were provided with the opportunity to take all rest periods to which they were entitled, and that Class Members were relieved of all duties during these scheduled rest breaks. Thus, proving liability, maintaining certification, and calculating damages for the meal and rest period claims would have presented significant challenges. As a result, Defendant claims that Plaintiff's damage calculations are unrealistic and overinflated. Indeed, Plaintiff would have faced difficulty in maintaining certification of these claims, and Plaintiff's estimate of damages for the meal and rest period claims would likely be significantly discounted.

Plaintiff's Recovery Period Claim

44. Plaintiff's damages estimate for his claim that Defendant failed to provide heat recovery periods, without interest, totaled approximately \$743,250.13. Plaintiff's and Class Members' heat

1 recovery claim is premised on the theory that, although Class Members' primary duty was to work
2 outdoors in Los Angeles traffic, employees were not provided with shaded, of-duty areas when outdoor
3 temperatures exceeded 80 degrees Fahrenheit. Additionally, there were no five-minute off-duty recovery
4 periods to prevent heat illness. Defendant did not supply tents, canopies, or other sources of shade, nor
5 did Defendant have any written policy or practice addressing recovery periods.

6 45. Plaintiff's damage calculations for the recovery period claim used the average hourly rate
7 of pay across the Class Period as the one-hour of wages owed as the premium for each non-compliant
8 recovery period. Plaintiff alleges these premium wages were never paid for non-compliant recovery
9 periods. To estimate the amount of damages for the recovery period claim, Plaintiff multiplied the average
10 hourly rate of pay (\$25.72) by the average number of shifts worked per weekly pay period by each
11 employee (5 shifts) by the percentage of Class Members that worked outdoors (98%) by the estimated
12 violation rate (34%) by the estimated total number of pay periods during the Class Period (17,500):

$$\begin{array}{rcl} & \$25.72 \text{ (average hourly rate)} & \\ \times & 5 \text{ (average number of shifts per pay period)} & \\ \times & 98\% \text{ (percentage of Class Members that worked outdoors)} & \\ \times & 34\% \text{ (estimated violation rate)} & \\ \times & \underline{17,500 \text{ (total number of pay periods in the Class Period)}} & \\ = & \$743,250.13 \text{ (estimated amount for unpaid meal period premiums)} & \end{array}$$

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19 **Plaintiff's Off-the-Clock Claim**

20 46. Plaintiff's claim for unpaid wages due to being required to work while off the clock was
21 also based on Defendant requiring Class Members to arrive at Defendant's warehouse 30 minutes before
22 dispatch time to prepare for the day's work, for which they were not compensated.

23 47. Plaintiff further alleged that he and the Class Members were required to work while off
24 the clock by being required to work through their meal periods.

25 48. Despite routinely working through meal periods and rest periods, Plaintiff and the Class
26 Members were never paid meal period or rest period premium wages.

27 49. Plaintiff's total estimate of damages for unpaid minimum and regular wages, without
28 interest and liquidated damages for unpaid minimum wage, totaled \$44,258.80. This amount was

determined by calculating the average number of shifts worked per pay period per employee (5), multiplied by the estimated average number of hours worked while off the clock per shift (0.5 hours), by the estimated violation rate (7%), by the total number of workweeks during the Class Period (17,500) by the average minimum wage (\$14.45):

$$\begin{array}{rcl} & 5 \text{ (average number of shifts per pay period)} & \\ \times & 0.5 \text{ (estimated average number of hours worked while off the clock)} & \\ \times & 7\% \text{ (estimated violation rate)} & \\ \times & 17,500 \text{ (total number of work weeks in the Class Period)} & \\ \times & \underline{\$14.45 \text{ (average minimum wage)}} & \\ = & \$44,258.80 \text{ (estimated amount for unpaid off-the-clock work)} & \end{array}$$

Plaintiff's Overtime Claim

50. Plaintiff's claim for overtime wages is based on the allegation that Plaintiff and Class Members spent a significant amount of time working off the clock without being allowed to track those hours and were therefore deprived of payment for all hours that should have been denoted as overtime hours.

51. Plaintiff's total estimate of damages for unpaid overtime wages, without interest, totaled approximately \$1,726,696.13. To find the total amount owed, my firm determined the average overtime rate of pay (\$38.58), and the average double-time rate of pay (\$51.44). My firm then multiplied the estimated average number of overtime hours worked per shift (0.5), by the average number of shifts per pay period (5 shifts), by the total number of workweeks during the Class Period (17,500), by the percentage of shifts worked that were longer than 8 hours (93%), by the average overtime rate (\$38.58) for shifts worked that were longer than 10 hours (42%), by the average double-time rate (\$51.44) for shifts worked that were longer than 12 hours (51%):

$$\begin{array}{rcl} \times & 0.5 \text{ (estimated number of overtime hours worked per shift)} & \\ \times & 5 \text{ (average number of shifts per pay period)} & \\ \times & 17,500 \text{ (total number of work weeks in the Class Period)} & \\ \times & 93\% \text{ (percentage of shifts longer than eight hours)} & \\ \times & 38.58 \text{ (estimated overtime rate)} & \end{array}$$

x 42% (percentage of shifts longer than ten hours)
x \$51.44 (estimated double-time rate)
x 51% (percentage of shifts longer than twelve hours)
= \$359,076 (estimated amount for unpaid overtime)

52. Defendant denies Plaintiff's unpaid overtime claim, contending that it followed all applicable laws with respect to Plaintiff's and Class Members' employment, particularly regarding paying them for all overtime hours worked at the proper overtime rate of pay, and that there were no hours worked while off the clock leading to uncaptured overtime.

Plaintiff's Wage Statement Claim

53. As a result of the alleged violations described above, Defendant failed to provide Plaintiff and the Class Members with accurate itemized wage statements because the wage statements provided did not indicate the correct number of hours worked, the correct amounts of gross and net wages earned, and all applicable hourly rates at the correct number of hours worked at each applicable hourly rate. Plaintiff further contends that Defendant's wage statements were inaccurate because they failed to include all compensation owed from meal and rest period premium wages, because these premium wages were not paid, as well as wages owed for unpaid off-the-clock work. As a result, Plaintiff contends the wage statements therefore fail to state the correct total amount of gross and net compensation owed.

54. Plaintiff's estimated amount of statutory penalties for this claim is approximately \$840,650. This calculation assumes that there are 351 employees at any given time, multiplied by \$50 for the initial violation for each employee ($351 \times \$50 = \$17,550$), and multiplied by \$100 for each subsequent violation over 8,231 subsequent pay periods ($351 \times \$100 \times 8,231 = \$823,100$). These two amounts added together equal \$840,650. Because Labor Code section 226(e) caps these statutory penalties at \$4,000 per employee, however, and because the total amount calculated above exceeded \$4,000 per employee, I recalculated the total amount of statutory penalties by dividing the amount by 351 employees employed at any given time, which results in an amount of \$2,395.01 per employee. Additionally, because this claim is reliant on proving liability as to the meal period, rest period, and overtime claims, and because Defendant has a potential viable defense that any violation was not knowing and intentional, this claim is susceptible to a substantial reduction in value.

Plaintiff's Waiting Time Penalties Claim

55. Plaintiff's claim for waiting time penalties on behalf of former employees was estimated by calculating the total amount of wages earned per employee per day to calculate the total amount of wages owed per day, multiplied by 30 days. This was done as follows:

$$\begin{array}{r} 8.00 \text{ (average shift length)} \\ \times \$25.72 \text{ (average hourly rate)} \\ \hline \$205.76 \text{ (wages earned per day per employee at average hourly rate)} \end{array}$$

56. This amount was then added to the amount calculated as the total amount of overtime wages owed per employee, which was calculated as follows:

$$\begin{array}{r} 2.96 \text{ (average off-the-clock hours worked per shift)} \\ \times \$38.58 \text{ (average overtime rate)} \\ \hline \$114.20 \text{ (overtime wages earned per day per employee)} \end{array}$$

57. Adding these two totals together resulted in a total daily amount of unpaid minimum, regular, and overtime wages of \$319.96 per employee. Because Class Members also were not paid meal (\$25.72), rest (\$25.72), and recovery (\$11.46) period premiums, Plaintiff added these premiums to the total daily amount, making the total \$382.86. This amount represents the total amount of unpaid wages for one day for one employee. Multiplying this number by 30 days, by the total number of all former employees (341), resulted in a damages calculation of \$3,916,625.06 (\$382.86 x 30 x 341).

58. Thus, Plaintiff's total estimate of penalties for this claim was approximately \$3,916,625.06; however, for the reasons stated above in regard to Plaintiff's meal period, rest period, recovery period, and overtime claims, Defendant may have been able to assert a "good faith" defense if there were any unpaid wages, which may have precluded the imposition of any waiting time penalties, or at the very least substantially undercut the value of this claim. In addition, the damages were calculated based upon the number of hours Plaintiff alleges he and Class Members worked, which Defendant contends is inflated and unrealistic, particularly the off-the-clock and overtime hours. Further, this is a derivative claim and is thus dependent on the substantive violations that Plaintiff alleges.

Plaintiff's Reimbursement Claim

59. Plaintiff's reimbursement claim is based on allegations that Plaintiff and Class Members

were required to use their personal cell phones in the discharge of their job duties, including taking and sending photos of worksites and communicating with Defendant and other Class Members.

60. Plaintiff's total damages estimate for this claim, without interest, was \$77,601.21. This was calculated by multiplying the estimated number of non-exempt employees at any given time (123) by the number of months in the putative class period at the time of mediation (63.09) by \$10 in reimbursement expenses per months, and then multiplied by 100% to reflect the violation rate:

$$\begin{array}{rcl}
 & 123 \text{ (number of non-exempt employees at any given time)} & \\
 \times & 63.09 \text{ (months in the Class Period)} & \\
 \times & \$10 \text{ (reimbursement expenses per month)} & \\
 \times & \underline{100\% \text{ (estimated violation rate)}} & \\
 = & \$77,601.21 \text{ (estimated amount for unpaid reimbursement expenses)} &
 \end{array}$$

PAGA Claims

61. Plaintiff's estimate of the maximum amount of civil penalties recoverable under PAGA totaled \$2,734,781 which was derived from Defendant's alleged violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246, 510, 512, 1197, and 2802.

62. PAGA Penalties for Meal Period Violations:

$$\begin{array}{rcl}
 & \$100 \text{ (civil penalty per Labor Code §558)} & \\
 \times & 6,489 \text{ (total number of pay periods within PAGA Period)} & \\
 \times & \underline{100\% \text{ (violation rate)}} & \\
 = & \$324,450 &
 \end{array}$$

63. PAGA Penalties for Rest Period Violations:

$$\begin{array}{rcl}
 \times & \$100 \text{ (civil penalty per Labor Code §2699(f))} & \\
 \times & 6,489 \text{ (total number of pay periods within PAGA Period)} & \\
 \times & \underline{100\% \text{ (violation rate)}} & \\
 = & \$648,900 &
 \end{array}$$

64. PAGA Penalties for Recovery Period Violations:

$$\begin{array}{rcl}
 \times & \$100 \text{ (civil penalty per Labor Code §2699(f))} & \\
 \times & 6,489 \text{ (total number of pay periods within PAGA Period)} &
 \end{array}$$

x 34% (violation rate)

= \$109,340

65. PAGA Penalties for Unpaid Wages:

x \$100 (civil penalty per Labor Code § 1197.1)

x 6,489 (total number of pay periods within PAGA Period)

x 100% (violation rate)

= \$317,961

66. PAGA Penalties for Reimbursement Violations:

x \$100 (civil penalty per Labor Code § 2699(f))

x 6,489 (total number of pay periods within PAGA Period)

x 100% (violation rate)

= \$324,450

67. PAGA Penalties for Wage Statement Violations:

x \$100 (civil penalty per Labor Code §2699(f))

x 6,489 (total number of pay periods within PAGA Period)

x 100% (violation rate)

= \$648,900

68. PAGA Penalties for Inaccurate Records:

x \$500 (civil penalty per Labor Code § 1174.5)

x 351 (estimated number of employees in PAGA Period)

x 100% (violation rate)

= \$175,500

69. PAGA Penalties for Waiting Time:

x \$100 (civil penalty per Labor Code § 2699(f))

x 263 (estimated number of former employees in PAGA Period)

= \$26,300

70. As with the other claims referenced above, however, Plaintiff's estimates of civil penalties were based on violation rates vulnerable to being undercut and/or substantially devalued. Furthermore, as

1 with the imposition of any penalties under PAGA, there was a very real risk that the Court may further
2 reduce Plaintiff's estimated amount under Labor Code section 2699(e)(2), and it was very likely that,
3 given the attenuated nature of some of the claims, the Court would, in its discretion, limit the award
4 because it was unjust, arbitrary and oppressive, or confiscatory. As previously discussed, Defendant
5 claims it did not engage in any Labor Code or Wage Order violations. By extension, Defendant claims
6 Plaintiff will not be able to demonstrate that Defendant is liable for civil penalties under the Labor Code
7 or statutory penalties under PAGA. Therefore, the settlement of the claim for penalties under PAGA is
8 reasonable under the circumstances here because the Parties negotiated a good faith amount for PAGA
9 penalties, which was not the result of self-interest at the expense of Class Members.

10 71. The above calculations yield a total damage calculation of \$13,059,707.20, which is full
11 value for all claims. A more realistic estimate would assume a 75% chance of certification and a 75%
12 chance of success on the merits, which would yield a damage value of \$7,346,085.30.

13 **THE SETTLEMENT TERMS**

14 72. On January 13, 2025, the Parties fully executed this non-reversionary Settlement, for
15 which Plaintiff now seeks the Court's preliminary approval. The basic terms of the Settlement are as
16 follows.

17 73. The "Class" consists of all persons employed by Defendant in California and classified as
18 a non-exempt employee who worked for Defendant during the "Class Period," which is defined as the
19 period from August 9, 2019, to December 1, 2024. Settlement Agreement ("SA"), at ¶¶ 1.5, 1.12.

20 74. A "Class Member" or "Settlement Class Member" is a member of the Class, as either a
21 Participating Class Member or Non-Participating Class Member (including a Non-Participating Class
22 Member who qualifies as an Aggrieved Employee). SA, at ¶ 1.9. "Participating Class Members" are those
23 who do not submit a valid and timely Request for Exclusion from the Settlement. SA, at ¶ 1.35.

24 75. The "Individual Class Payments" are each Participating Class Member's pro rata share of
25 the Net Settlement Amount calculated according to the number of weeks worked during the Class Period.
26 SA, at ¶ 1.23. The "Individual PAGA Payments" are each Aggrieved Employee's pro rata share of 35%
27 of the PAGA Penalties calculated according to the number of Workweeks during the PAGA Period. SA,
28 at ¶ 1.24.

76. **The Gross Settlement Amount:** Defendant will pay a non-reversionary sum of \$1,100,000 in full resolution of all Released Class Claims, Released PAGA Claims, and the Action, which is inclusive of Class Counsel's Fees and Costs, the Class Representative Service Payment, Administration Expenses Payment, PAGA Penalties (consisting of the LWDA PAGA Payment and the Individual PAGA Payments), and the Individual Class Payments. SA, at ¶ 1.22. Defendant shall pay the applicable employer taxes in addition to the Gross Settlement Amount. SA, at ¶ 3.1.

77. **Settlement Funding and Distribution Schedule:** Defendant shall fund the Gross Settlement Amount with an initial payment of 50% of the Gross Settlement Amount (\$550,000) within 45 days of the Effective Date which means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. SA, at ¶ 3.1. Thereafter, Defendant shall pay the remaining amount in quarterly installments of 25% commencing once calendar quarter after the initial payment and the remaining amount (25%) one calendar quarter thereafter. *Id.* Within seven (7) calendar days after the Defendant fully funds the initial 50% of the Gross Settlement Amount, the Administrator will send the Parties the final Workweeks Calculations along with the estimated Individual Class Payments to the Participating Class Members for the Parties' review. SA, at ¶ 4.4. Within 10 business days from the date the Parties approve the calculations, the Administrator shall disburse the initial distribution, which will include pro rata Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment, all proportionally based on the initial 50% funding of the Gross Settlement Amount. SA, at ¶ 4.4. Within 10 business days after Defendant fully funds the remaining 50% of the Gross Settlement Amount, the Administrator will calculate and distribute the remaining Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment, in proportion to the funded amount. *Id.* Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of the remaining Individual Class Payments and Individual PAGA Payments. *Id.*

78. **The Net Settlement Amount:** The Net Settlement Amount is the portion of the Gross Settlement Amount available for distribution to Participating Class Members after deducting the payments for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. SA, at ¶ 1.28. The remainder is the Net Settlement Amount to be paid to Participating Class Members as Individual Class Payments. Assuming the Court awards these amounts to the full extent requested in the Settlement, the total Net Settlement Amount available for distribution to Participating Class Members will total approximately \$667,370. This amount is calculated as the Gross Settlement Amount of \$1,100,000 minus the following amounts:

- a. Class Counsel's Fees: \$366,630. SA, at ¶ 3.2.2.
- b. Class Counsel's Litigation Costs: \$25,000. SA, at ¶ 3.2.2.
- c. Administrator Expenses: \$8,500. SA, at ¶ 3.2.3.
- d. Class Representative Service Payment: \$7,500. SA, at ¶ 3.2.1.
- e. PAGA Penalties: \$25,000. (\$16,250 to LWDA and \$8,750 to PAGA Members). SA, at ¶ 3.2.6.

79. **Class Counsel's Fees and Costs:** Class Counsel will seek an award of fees and costs for the services rendered and yet to be rendered on behalf of the Class. Class Counsel will seek, and Defendant will not oppose, an award of \$366,630 (33.33% of the Gross Settlement Amount) for attorney's fees, and the reimbursement of actual costs and expenses associated with Class Counsel's representation of the Class in an amount not to exceed \$25,000. SA, at ¶ 3.2.2.

80. **Settlement Administrator Expenses:** These are the actual and direct costs reasonably charged by the Settlement Administrator for administering the Settlement, including, but not limited to, printing, distributing, and tracking documents related to the Settlement, calculating/confirming the Workweeks from the information contained in the Class List, calculating each Participating Class Member's Individual Class Payment, calculating each PAGA Member's Individual PAGA Payment, tax reporting, distributing payments due under the Settlement, providing necessary reports and declarations, and any other duties and responsibilities set forth herein to process this Settlement and/or as requested by the Parties or the Court. The Parties selected Apex Class Action, LLC to serve as the Settlement

Administrator. The Settlement Administration Costs shall not exceed \$8,500. SA, at ¶ 3.2.3.

81. **Class Representative Service Payment:** In recognition of his efforts in obtaining the benefits to the Class, and in consideration of a general release of Plaintiff's individual claims, Plaintiff will request a Class Representative Service Payment of up to \$7,500, which Defendant will not oppose. SA, at ¶ 3.2.1.

82. **PAGA Penalties:** The Parties agreed to allocate the sum of \$25,000 from the Gross Settlement Amount to settle the claims for civil penalties pursuant to PAGA. This amount was negotiated in good faith and is not the result of self-interest at the expense of Class Members. Of this amount, 65% (\$16,250) will be paid to the LWDA to cover the State of California's share of the total penalty amount, while the remaining 35% (\$8,750) will be distributed to Aggrieved Employees on a pro rata basis based on each Aggrieved Employee's number of PAGA Pay Periods worked. SA, at ¶ 3.2.6.1.

83. **Calculation of Individual Class Payments:** The Settlement Administrator will calculate the amount of each Individual Class Payment by: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. SA, at ¶ 3.2.5.2. Each Participating Class Member will therefore be entitled to a pro-rata share of the Net Settlement Amount based on the number of Workweeks he or she worked for Defendant during the Class Period. "Workweeks" shall mean any week during which a Class Member worked for Defendant for at least one day during the Class Period. SA, at ¶ 1.46. These numbers will be determined based on information provided to the Settlement Administrator by Defendant.

84. Data provided by Defendant indicates that there are approximately 464 Class Members who collectively worked a total of 17,500 Workweeks. Class Counsel therefore estimates that each Class Member will receive roughly \$38.13 per Workweek (i.e., \$667,370 divided by 17,500).

85. If all 464 Class Members participate in the Settlement, the estimated average amount to be distributed to each Participating Class Member will be approximately \$1,438.30 (Net Settlement Amount of \$667,370 divided by 464 Class Members = \$1,438.30).

86. **Calculation of Individual PAGA Payments:** The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA

1 Penalties (i.e., \$8,750) by the total number of PAGA Period Pay Periods worked by all Aggrieved
2 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
3 Period Pay Periods. SA, at ¶ 3.2.6.1. "PAGA Pay Period" shall mean any Pay Period during which an
4 Aggrieved Employee was employed by Defendant for at least one day during the Pay Period. SA, at ¶ 1.30.
5 These numbers will be determined based on information provided to the Settlement Administrator by
6 Defendant. Aggrieved Employees will be issued payment of their Individual PAGA Payments regardless
7 of whether they opt out of the Class Settlement.

8 87. I believe the Settlement provides the fairest way to distribute the Settlement proceeds to
9 Class Members, which is to calculate each Class Member's share of the Settlement proceeds based on the
10 number of Workweeks worked by each Class Member during the Class Period, because it distributes the
11 Settlement proceeds according to the amount of time that each Class Member worked and therefore the
12 number of violations experienced during the Class Period.

13 88. All Class Members will receive their share of the Settlement proceeds without the need to
14 submit a claim form.

15 89. **Taxation and Withholding:** 10% of each Individual Class Payment will be allocated as
16 wages, and 90% shall be allocated as interest and penalties. SA, at ¶ 3.2.5.3. The portion of the Individual
17 Settlement Shares allocated to wages will be reported by the Settlement Administrator on an IRS Form
18 W-2, and the portion of the Individual Settlement Shares allocated to interest and penalties will be reported
19 by the Settlement Administrator on an IRS Form 1099. The Individual PAGA Payments are non-wage
20 payments and will be reported by the Settlement Administrator on an IRS Form 1099. SA, at ¶ 3.2.6.2.

21 90. Defendant's share of any employer-side payroll taxes and other required employer
22 withholdings due on the Individual Class Payments, including, but not limited to, Defendant's FICA,
23 FUTA, and SDI contributions ("Employer Taxes"), shall be paid separate and apart from the Gross
24 Settlement Amount. SA, at ¶ 3.1.

25 91. **Disposition of Returned and Uncashed Checks:** Any checks issued by the Settlement
26 Administrator to Participating Class Members and Aggrieved Employees will be negotiable for 180
27 calendar days after initial issuance. SA, at ¶ 4.4.1. Thereafter, if a check remains uncashed, the
28 Administrator shall transmit the funds represented by such checks to the California Controller's

Unclaimed Property Fund in the name of the Class Member, thereby leaving no unpaid residue. SA, at ¶ 4.5.1.

92. **Procedure for Requesting Exclusion:** Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator by mail, email, or fax a timely, compliant, and signed written Request for Exclusion not later than thirty (30) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). SA, at ¶ 7.5.1. To be valid, a Request for Exclusion must be timely sent by mail, email, or fax by the deadline set forth herein. The Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. *Id.* The date of the postmark on the Request for Exclusion shall be the means used to determine whether a Request for Exclusion has been timely submitted. *Id.* Any Settlement Class member who excludes himself from the Settlement Class will not be entitled to any recovery under this Settlement, will not be bound by the terms of the Settlement, and will not have any right to object, appeal, or comment thereon. *Id.* The Settlement Administrator will provide the Parties with weekly updates regarding the number of Requests for Exclusion received. *Id.* All PAGA Members will be bound by the PAGA Settlement regardless of whether or not they submit a valid and timely Request for Exclusion.

93. **Released Parties:** The "Released Parties" include Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. SA, at ¶ 1.41.

94. **Released Class Claims:** All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. SA, at ¶ 5.2. Except as set forth in Section 5.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. *Id.*

95. **Released PAGA Claims by Non-Participating Class Members:** All Non-Participating Class Members who are 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 from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action. SA, at ¶ 5.3.

96. **Release by Named Plaintiff:** Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Action and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Complaint and First Amended Complaint, and Plaintiff's PAGA Notice, or ascertained during the Action and released under Section 5.4 in the Settlement Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. SA, at ¶ 5.1.

97. Plaintiff further expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code. SA, at ¶ 5.1.1.

98. The Releases are effective on the date Defendant fully funds the settlement including the employer's share of payroll taxes. SA, at ¶ 5.

CLASS NOTICE AND NOTICE PLAN

99. A copy of the proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

100. The Class Notice is accurate and informative. The Class Notice summarizes the lawsuit, including the contentions and denials of the Parties, the proceedings to date, and the terms and conditions

1 of the Settlement in plain language in an informative and coherent manner.

2 101. The Class Notice also fully informs Class Members of the terms of the Settlement, of its
3 effect on their rights, of their options as Class Members (i.e., to object, opt out, and/or do nothing), and of
4 the consequences of exercising those options. The Class Notice also outlines the procedure and deadlines
5 for opting out of the Settlement, for submitting objections to the Settlement, and how to receive an
6 Individual Class Payment – stating clearly that Class Members do not need to submit a claim form in order
7 to receive an Individual Class Payment, thereby encouraging Class Member participation and increasing
8 the likelihood of Class Members obtaining recovery. The Class Notice will also provide the estimated
9 amount of the Individual Class Payment to which the Class Member would be entitled if he or she
10 participates in the Settlement.

11 102. The Class Notice also states the amount of the proposed service award to be paid to the
12 Class Representative; states the amount of Class Counsel’s request for attorneys’ fees; states that Class
13 Counsel will be reimbursed for actual litigation costs and states the maximum amount of litigation costs
14 to be awarded; states the amount to be paid to the Settlement Administrator; states the amount to be
15 allocated to PAGA and paid to the LWDA; states the date, time, and place of the final approval hearing;
16 and explains how Class Members can obtain additional information, as well as view a copy of the
17 Settlement Agreement. (See Exhibit A to Settlement Agreement.)

18 103. Furthermore, the Class Notice also makes clear that the Settlement does not constitute an
19 admission of liability by Defendant, that the Court has not ruled on the merits of the action, and that the
20 final settlement approval decision has yet to be made.

21 104. The Parties agreed to hire Apex Class Action, LLC (“Apex”), an experienced third-party
22 administrator, to serve as Settlement Administrator. Prior to selecting Apex as the Settlement
23 Administrator, the Parties obtained competitive bids from other third-party settlement administrators, and
24 determined that Apex’s estimate was the most reasonable.

25 105. The proposed notice plan, calling for First Class mailed notice to all Class Members, as
26 well as in-depth skip tracing at the outset and for returned notices, is consistent with class notices approved
27 by state and federal courts, and under the circumstances here, is the best notice practicable and the method
28 most likely to reach the greatest number of Class Members.

106. The Class Notice will be mailed to Class Members in English. SA, at ¶ 1.11.

CLASS COUNSEL’S VIEW OF THE SETTLEMENT

107. With a maximum value of \$1,100,000, the Settlement results in a substantial benefit to all Class Members and provides significant relief for the disputed wage and hour claims, which I believe places it well within the range of reasonableness.

108. While the Gross Settlement Amount represents a discount on the overall exposure to Defendant assuming Plaintiff prevailed on all issues pertinent to class certification, established liability on all claims, and proved damages 100% as estimated, this reduction in compromise is extremely reasonable considering the substantial risks Plaintiff would face maintaining class certification and establishing liability on all claims against Defendant.

109. In reaching the Settlement, I carefully considered the following: the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of further litigation and maintaining class certification through trial; the present state of the law as it applies to wage-and-hour class actions; and the burdens of proof necessary to establish liability against Defendant.

110. Absent a settlement, the Parties would likely spend considerable time, effort, and money on additional discovery and depositions, including substantial meet and confer and motion work, and preparation of Plaintiff’s motion for class certification and/or opposition to Defendant’s likely motion to decertify the Class—if class certification were granted—in addition to likely filing cross-motions for summary judgment. Indeed, even if Plaintiff were successful in proving all the class claims at trial and recovered the full amount of damages as estimated, it is likely that Defendant would appeal any judgment in Plaintiff’s favor, potentially drawing out the litigation for many more years with no guarantee of recovery by Plaintiff or the Class.

111. It is also likely that Plaintiff would need to retain experts to perform analysis for both class certification as well as trial. Although the topics on which the expert would be expected to provide opinions and testimony are not yet known, it is very likely that said expert would cost thousands of dollars, if not tens of thousands of dollars.

112. I acknowledge the cost and delay of continued proceedings necessary to prosecute the action through trial and appeal and, in bringing this action, carefully considered the uncertain outcome

1 and the risks associated with any litigation, particularly complex actions such as this. I am also mindful
2 of the inherent problems of proof, and possible defenses to the causes of action asserted in the lawsuit.
3 Although Plaintiff asserts that Defendant is liable to all Class Members for their unpaid wages, damages
4 and penalties, none of the claims are certain. Thus, even though Plaintiff believes that the case possesses
5 substantial merit, the litigation cannot legitimately be characterized as being one without risk or that
6 Plaintiff would inevitably prevail at trial. Defendant was represented by able counsel who mounted a
7 strong defense against Plaintiff's claims. Throughout this litigation, Defendant denied any liability for the
8 claims alleged, contending that they followed all applicable law with respect to Plaintiff's and Class
9 Members' employment, that Class Members were provided and properly authorized and permitted to take
10 all meal and rest periods and that Class Members were paid all overtime wages owed.

11 113. Granting approval of the class action settlement, however, would guarantee the payment
12 of the Gross Settlement Amount of \$1,100,000 and provide payment to Class Members who decide to
13 participate in this settlement. As demonstrated herein, the Individual Class Payments to Class Members
14 are within the range of reasonableness and provide the best resolution for this case considering the risks
15 involved in continuing litigation, the potential delay of years, the additional expenses the Parties would
16 incur, and the fact that this Court has not yet addressed the issues of class certification, liability, and
17 damages.

18 114. Based on my years of experience in other wage and hour cases, I believe I am well-qualified
19 to evaluate the class claims and viability of defenses in this action, and I strongly support this Settlement.

20 **CLASS COUNSEL'S FEES AND COSTS ARE REASONABLE**

21 115. Class Counsel will request an attorneys' fee award in the amount of \$366,630, which
22 equates to one-third of the Gross Settlement Amount, as well as reimbursement of actual costs and
23 expenses associated with Class Counsel's representation of the Class in an amount not to exceed \$25,000.
24 SA, at ¶ 3.2.2. These amounts are warranted and reasonable because of the substantial work and effort
25 incurred to achieve the Settlement on behalf of the Class and the real and significant monetary relief
26 obtained. This work includes preparing and sending a notice to the LWDA; filing the Complaint;
27 propounding written discovery and engaging in informal document and information exchange; extensive
28 review and analysis of employee time and payroll records; preparing a thorough damages analysis;

1 preparing for and attending a mediation; negotiating the terms of the class action and PAGA settlement;
2 and preparing and filing this motion for preliminary approval.

3 116. The fee request will be supported at the time of final approval by a detailed explanation of
4 the qualifications of each timekeeper, and their corresponding hourly rate, along with an explanation of
5 the amount of time worked on the various tasks performed on behalf of Plaintiff and the Class. Similarly,
6 the costs request will be supported at the time of final approval with an explanation of the amount and
7 nature of the costs incurred.

8 117. Although case law supports as high as a 50% fee award on common settlement funds of
9 less than \$10 million, Class Counsel's request for an attorneys' fee award of \$366,630, representing
10 33.33% of the Gross Settlement Amount, is both "reasonable and fair" in light of the amount of work
11 performed and the amount of resources and labor employed in the prosecution of this action. Based on my
12 experience and knowledge of the relevant legal market for wage and hour class actions, these amounts
13 accurately reflect the marketplace for similar representation of plaintiffs in wage and hour cases on a
14 contingency basis.

15 118. My firm invested a significant amount of time into each step of this litigation. We dedicated
16 a substantial amount of resources to effectively litigate and resolve these claims, resulting in what I believe
17 to be the best possible outcome for the Class, given the risks of continued litigation.

18 119. My firm maintains detailed, contemporaneous time records, which my firm will submit, if
19 required, in support of Class Counsel's fee request in the motion for final approval and award of attorney's
20 fees and costs, to be filed in advance of the Final Approval Hearing. In making a fee request in class action
21 cases such as this, I always analyze the factors that the court must consider in awarding fees. I believe that
22 such circumstances exist here to justify the requested attorney fee award in the amount of one-third of the
23 Gross Settlement Amount, including: (a) the skilled work involved in achieving such a good settlement
24 for the Class and bringing the action to an efficient and speedy conclusion; and (b) the associated risks in
25 taking this matter on a contingency basis. In light of these considerations, I believe Class Counsel's
26 requested fee of \$366,630, or 33.33% of the Gross Settlement Amount, is reasonable.

27 120. My firm also incurred expenses for items such as filing fees, mediation fees, postage,
28 delivery, online research, telephone, and copying charges to date in order to effectively prosecute this

1 action. These are categories of expenses which, on information and belief, other law firms customarily
2 charge their fee-paying clients. My firm committed and continues to commit significant financial and
3 staffing resources to this case and anticipates having to spend additional time and resources in seeking
4 final approval of the Court and ensuring proper administration of the Settlement funds. In light of these
5 considerations, Class Counsel requests reimbursement for actual litigation expenses in an amount not to
6 exceed \$25,000.

7 **CLASS REPRESENTATIVE SERVICE PAYMENT TO CLASS REPRESENTATIVE**

8 121. At the same time as Class Counsel's fee request, Plaintiff will request a Class
9 Representative Service Payment in the amount of \$7,500, which shall be in addition to the Individual
10 Class Payment and Individual PAGA Payment to which he will be entitled to receive as a Class Member
11 and PAGA Member. SA, at ¶ 3.2.1.

12 122. Plaintiff sought legal assistance from Class Counsel, communicated with Class Counsel
13 via telephone and email, identified potential witnesses, assisted with identifying types of documents that
14 we should request from Defendant in preparation for the mediation, and provided relevant information
15 and worked closely with Class Counsel to protect the best interests of the Class by agreeing to act as a
16 class representative. Plaintiff made himself available, via telephone, throughout the day of mediation, and
17 my firm did in fact reach out to him throughout the day and during the continued settlement negotiations
18 that followed.

19 123. Plaintiff is also agreeing to a general release of his claims, which is an expansive release
20 not required of other Class Members who will only execute a limited release of claims.

21 124. Plaintiff's participation was an essential element that allowed Class Counsel to reach this
22 significant settlement on behalf of the Class.

23 125. I believe other Class Members would not have taken any action individually and, but for
24 Plaintiff's contributions, they would not receive the compensation afforded by this Settlement. I believe
25 that the requested service award in the amount of \$7,500 to Plaintiff is fair and reasonable.

26 126. Separate and apart from this Settlement, Plaintiff has entered into an Individual Settlement
27 Agreement and Full and Final Release for his individual claims alleged in this Action. The basis of these
28 claims is fully briefed in the complaint in this Action. The Parties can provide this agreement to the Court

1 at the Court's request. The negotiations of Plaintiff's individual claims were conducted separately from
2 the class and PAGA settlement and did not pose a conflict with the absent class members.

3 **PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

4 127. For the purposes of settlement, Plaintiff contends, and Defendant does not dispute that
5 conditional certification of the Class is appropriate. SA, at ¶¶ 9, 12.2.

6 128. Documents and information exchanged during the litigation reflect approximately 464
7 Class Members and 351 Aggrieved Employees at the time of mediation, all of whom Defendant employed
8 within the state of California.

9 129. The class definition is precise, objective, and presently ascertainable, and makes
10 abundantly clear who is a member of the Class. In addition, Class Members can be identified easily by
11 way of Defendant's records. Defendant maintains records containing relevant information about Plaintiff
12 and Class Members, including, but not limited to, full dates of employment during the Class Period, full
13 name, social security number, mailing address, telephone number, and date of birth.

14 130. Defendant produced the relevant policies that were in effect during the Class Period.
15 Plaintiff contends that these handbooks and policies and procedures were applicable to all Class Members
16 during the Class Period, and Plaintiff contends that all Class Members were subject to the same policies
17 and procedures throughout the Class Period.

18 131. Plaintiff performed the same or similar duties as other Class Members and contends that
19 he was a non-exempt employee, just like the other Class Members who he alleges were unable to take
20 compliant meal periods and rest periods and were not properly paid all wages. Therefore, Plaintiff's claims
21 are typical of the Class he seeks to represent because he was subject to the same alleged illegal policies,
22 procedures, practices, and course of conduct as all other Class Members.

23 132. Plaintiff has no conflict of interest with the Class and has, along with Class Counsel,
24 worked toward a positive resolution of this case, demonstrating his interest in prosecuting this Action and
25 his dedication to obtaining the best possible recovery for the Class.

26 133. In addition, Plaintiff's interests are co-extensive with those of the Class, and Plaintiff seeks
27 relief identical to that sought by every other Class Member

28 134. Class Counsel possesses extensive experience in prosecuting complex wage and hour class

1 actions and has worked diligently to achieve this Settlement for the Class.

2 135. I believe that this case could not have continued without Plaintiff's efforts and desire to
3 obtain this positive result for the Class. There are no conflicts between Plaintiff and his Counsel and Class
4 Members.

5 136. Absent class treatment, similarly situated employees with small but nevertheless
6 potentially meritorious claims for damages would, as a practical matter, have no means of redress because
7 of the time, effort, and expense required to prosecute individual actions.

8 137. It is my opinion that this Settlement Agreement is fair, reasonable, and adequate, and in
9 the best interest of the Class. It is therefore my opinion that this Settlement should receive the Court's
10 preliminary approval.

11 **FINAL APPROVAL ORDER AND JUDGMENT**

12 138. Pursuant to the Superior Court's checklist for preliminary approval, I have attached a draft
13 Proposed Final Approval Order and Judgment, which is attached as **Exhibit 5**.

14
15 I declare under penalty of perjury under the laws of the State of California and the United States
16 that the foregoing is true and correct. Executed on February 4, 2025, in San Diego, California.

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19 HALI M. ANDERSON
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff, Kenneth Nesmith, (“Plaintiff”) and defendant RCS Safety, LLC dba Roadway Construction Service, (“RCS” or “Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Kenneth Nesmith v. RCS Safety, LLC, dba Roadway Construction Service*, initiated on August 9, 2023, and pending in Superior Court of the State of California, County of Los Angeles, case number 23STCV18913.
- 1.2. “Administrator” means Apex Class Action LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.
- 1.5. “Class” means all persons employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the Class Period.
- 1.6. “Class Counsel” means Graham S.P. Hollis, Hali M. Anderson, and Samara A. Bahu of GrahamHollis, APC, located at 3555 Fifth Ave., Suite 200, San Diego, CA 92103.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, telephone number, Social Security number, and the dates of employment of each Class Member.
- 1.9. “Class Member” or “Settlement Class Member” mean a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as **Exhibit “A”** and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from August 9, 2019, to December 1, 2024.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendant” means named Defendant, RCS Safety, LLC dba Roadway Construction Service.
- 1.17. “Defense Counsel” means Jon C. McNutt of Husch Blackwell LLP, located at 355 South Grand Avenue, Suite 2850, Los Angeles, CA 90071.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22. “Gross Settlement Amount” means **\$1,100,000**, which is the maximum and total amount Defendant agrees to pay under the Settlement (exclusive of employer-side payroll taxes, which will be paid separately), except as provided in Section 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 35% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd.(i).
- 1.27. “LWDA PAGA Payment” means the 65% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd.(i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount (**\$1,100,000**), less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. Assuming the Court awards the full amount of the requested Service Award to Plaintiff, the Settlement Administrator’s fees and costs, Class Counsel’s attorneys’ fees and costs, and the PAGA payment, the total Net Settlement Amount available for distribution to participating Settlement Class Members will total approximately **\$667,370**.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from August 9, 2022 to December 1, 2024.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

- 1.33. "PAGA Notice" means Plaintiff's letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of **\$25,000** paid as settlement of PAGA civil penalties from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees (**\$8,750**) and the 65% to LWDA (**\$16,250**) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Kenneth Nesmith, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Section 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Section 5.3 below.
- 1.41. "Released Parties" means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 30 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Waiting Time Penalty Subclass" means all Class Members who were allegedly not paid all wages owed and whose employment with Defendant ended at any time

during the period commencing on the date that is within three years prior to the filing of the Complaint through the present.

- 1.46. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, (i.e., was not on vacation or a leave of absence) as a Class Member, during the Class Period, according to Defendant’s records. Workweeks of Non-Participating Class Members will not be included in the total number of workweeks for purposes of calculating and distributing the Individual Settlement Payments to Participating Class Members.

2. **RECITALS.**

- 2.1. On August 9, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to provide heat recovery periods; (4) failure to pay minimum, regular, and overtime wages; (5) failure to indemnify all necessary business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay all wages due upon separation of employment; (8) violation of Business & Professions Code §§ 17200, *et seq.*; (9) retaliation; and (10) wrongful termination in violation of public policy. On October 2, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant under the Private Attorneys General Act (“PAGA”). The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendant 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 liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. On September 9, 2024, the Parties participated in an all-day mediation presided over by David Rotman, Esq. (“Mediator”), which led to this Agreement to settle the Action. Thereafter a Memorandum of Understanding was entered into between the Parties outlining the basic terms of tentative settlement.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, time and pay records including a 20% sample of the Class Members which were thoroughly reviewed and analyzed by Class Counsel. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130 (2008) (“*Dunk/Kullar*”).
- 2.5. The Court has not granted class certification in this matter.

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

3. **MONETARY TERMS.**

- 3.1. **Gross Settlement Amount.** Except as otherwise provided by Section 9 below, Defendant promises to pay One Million One Hundred Thousand Dollars (**\$1,100,000**) and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Defendant will fund the gross settlement with an initial payment of 50% of the Gross Settlement Amount (**\$550,000**) within 45 days of the Effective Date which means the date when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. Thereafter, Defendant shall pay the remaining amount quarterly (25%) commencing one calendar quarter after the initial payment and the remaining amount (25%) one calendar quarter thereafter. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline(s) stated in this paragraph. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than **\$7,500** in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. In addition to the Gross Settlement Amount, Defendant will issue to Plaintiff to resolve his individual claims, including but not limited to retaliation (under Labor Code sections 98.6 and 1102.5) and wrongful termination, **\$25,000**. This settlement will be memorialized in a separate agreement.

- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than **33.33% of the Gross Settlement Amount**, which is currently estimated to be **\$366,630** and a Class Counsel Litigation Expenses Payment of not more than **\$25,000**. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed **\$8,500**, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than **\$8,500**, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: The Administrator, according to terms and procedures set forth in this Agreement, shall have the sole authority and obligation to calculate the amounts of Individual Class Payments. First, the Administrator will deduct from the Gross Settlement Amount: (i) Court approved Class Representative Service Payment; (ii) Class Counsel's Fees and Costs; (iii) Settlement Administration Costs, and (iv) the portion allocated as PAGA Penalties. The PAGA Penalties shall be distributed to the LWDA and the Participating Aggrieved Employees only. The amount remaining from the Gross Settlement Amount shall constitute the Net Settlement Amount. The Net Settlement Amount is currently estimated in the amount of **\$667,370**.
- 3.2.5. Distribution of the Net Settlement Amount: The Administrator shall distribute among the Participating Class Members the Net Settlement Amount as follows:
- 3.2.5.1. The Parties agree that the Individual Class Payments will be calculated based on the respective number of qualifying Workweeks each Participating Class Member worked during the Class Period.

3.2.5.2. *Distribution Formula.* Participating Class Members shall be allocated a pro-rata portion of the Net Settlement Amount available for distribution based upon their respective number of Workweeks. In addition, each Participating Class Member who is also a member of the Waiting Time Penalty Subclass will receive an allotment of six additional Workweeks, which will not count toward the escalation clause set forth in Section 8. The Settlement Administrator will add up all the Workweeks and calculate the total Workweeks for the Participating Class Members only. Each Participating Class Member shall be entitled to a pro-rata share of the Net Settlement Amount calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.5.3. *Tax Allocation of Individual Class Payments.* The entire payment associated with the Waiting Time Penalties Subclass shall be reported as penalties. For the Participating Class Member Individual Class Payments not allocated towards the Waiting Time Penalties Subclass, the payments shall be reported as follows: 10% of the amount distributed to each Participating Class Member will be considered the Wage Portion, and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 10% of the amount distributed to each Participating Class Member will be considered interest on the unpaid wages, and (iii) approximately 80% to statutory penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099.

3.2.5.4. Participating Class Members assume full responsibility and liability for any employee taxes owed by the Class Member on their Individual Class Payment or PAGA Payment.

3.2.6. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of **\$25,000** to be paid from the Gross Settlement Amount, with 65% (**\$16,250**) allocated to the LWDA PAGA Payment and 35% (**\$8,750**) allocated to the Individual PAGA Payments.

3.2.6.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties (**\$8,750**) 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.

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

4. **SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator pursuant to Section 3.1 above.
- 4.2. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 464 Class Members who collectively worked a total of 17,500 Workweeks.
- 4.3. Class Data. Not later than 20 business days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class list to the Administrator, in the form of a Microsoft Excel spreadsheet and all Class Data necessary for the Administrator to calculate the workweeks for the Class Period. To protect Class Members' privacy rights, the Administrator must maintain the Class List and Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to the Administrator's employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify the Administrator and Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.4. Payments from the Gross Settlement Amount. Within 7 calendar days after Defendant fully funds the initial 50% of the Gross Settlement Amount, the Administrator will send the Parties the final Workweek Calculations along with the estimated Individual Class Payments to the Participating Class Members for the Parties' review. Within 10 business days from the date the Parties approve the calculations, the Administrator shall disburse the initial distribution, which will include pro rata Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment, all proportionally based on the initial 50% funding of the Gross Settlement Amount. Defendant shall fund the remaining Gross

Settlement Amount in quarterly installments of 25%, with the first installment commencing one quarter after the initial 50% funding and the remaining amount (25%) one calendar quarter thereafter. Within 10 business days after Defendant fully funds the remaining 50% of the Gross Settlement Amount, the Administrator will calculate and distribute the remaining Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment, in proportion to the funded amount. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of the remaining Individual Class Payments and Individual PAGA Payments.

- 4.4.1. The Administrator will issue checks for the Participating Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (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. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered).
- 4.4.2. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.3. The Administrator must conduct a Class Member Address Search, using Experian (or substantially similar) in-depth skip-trace, for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 calendar days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.5. Disposition of Returned or Un-Cashed Checks. This is a non-reversionary "all-in" settlement. No unclaimed amounts will revert to Defendant.

4.5.1. ***Returned or Un-Cashed Checks.*** For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue."

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

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. **Plaintiff's Release.** Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Lawsuit, and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Complaint and First Amended Complaint, and Plaintiff's PAGA Notice, or ascertained during the Action and released under Section 5.4, below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

- 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. Except for Plaintiff Nesmith, as set forth in Sections 5.1 and 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- 5.3. Release by Aggrieved Employees: All Participating and Non-Participating Class Members who are 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 from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action.
- 5.4. Release by Named Plaintiff: In exchange for his Class Representative Service Payment, Plaintiff Kenneth Nesmith agrees to provide a full and separate general release of any and all claims, excluding the claims subject to the individual settlement agreement executed by Plaintiff, against the Released Parties regardless of whether such claims have been alleged against Defendant, including known or unknown claims.
6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.
 - 6.1. Defendant's Declaration in Support of Preliminary Approval. Within 15 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
 - 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the

Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (vii) a redlined version of the Parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.
- 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no

interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4. Notice to Class Members.
 - 7.4.1. No later than three business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Workweeks in the Class Data.
 - 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit “A.”** The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.4.3. Not later than 3 calendar days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 30 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received the Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 30 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

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

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

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of

the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Section 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

- 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 30 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.
- 7.7. Objections to Settlement.
- 7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- 7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 calendar days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- 7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge
- 7.8.5. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate

Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES.** Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are 464 Class Members and 17,500 Workweeks in the Class Period. Should the Class Members' Workweeks, during the Class Period, increase beyond 10% greater than 17,500 Workweeks, (i.e., beyond 19,250 Workweeks), then either (a) the Gross Settlement Amount will be increased on a pro-rata basis equal to the total percentage increase in the workweeks; or (b) Defendant, at its sole discretion, may elect to cut off the Class Period and PAGA Period on the last day on which the Workweeks do not exceed 19,250 Workweeks (the "Alternate End Date").
9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd.(l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the

Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

- 12.1. **No Admission of Liability, Class or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reason, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2. **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5. Attorney Authorization. Class 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.
- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13. Confidentiality. 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.
- 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Graham S.P. Hollis
Hali M. Anderson
Samara A. Bahu
GrahamHollis, APC
3555 Fifth Ave., Suite 200
San Diego, CA 92103

Telephone: 619-906-4025
Facsimile: 619-692-0822
Email: sbahu@grahamhollis.com

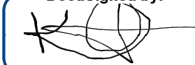
To Defendant:

Jon McNutt
Husch Blackwell LLP
355 South Grand Avenue, Suite 2850
Los Angeles, CA 90071
Telephone: 213-337-6577
Facsimile: 213-337-6551
Email: jon.mcnutt@huschblackwell.com

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

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

Dated: 12/27/2024

DocuSigned by:

38F1C2C387B149F...
Plaintiff Kenneth Nesmith

Dated:

Defendant RCS Safety, LLC dba Roadway
Construction Service

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Telephone: 619-906-4025
Facsimile: 619-692-0822
Email: sbahu@grahamhollis.com

To Defendant:

Jon McNutt
Husch Blackwell LLP
355 South Grand Avenue, Suite 2850
Los Angeles, CA 90071
Telephone: 213-337-6577
Facsimile: 213-337-6551
Email: jon.mcnutt@huschblackwell.com

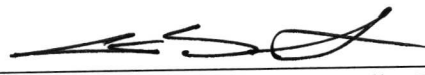
12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same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

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

Dated:

Plaintiff Kenneth Nesmith

Dated: *JAN. 13, 2025*

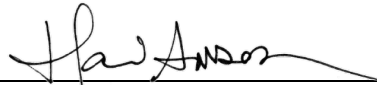


Defendant RCS Safety, LLC dba Roadway
Construction Service

Approved by Counsel as to form:

Dated: December 31, 2024

GRAHAMHOLLIS APC

By: 
Graham S.P. Hollis
Hali M. Anderson
Samara A. Bahu
Counsel for Plaintiff Kenneth Nesmith

Dated:

HUSCH BLACKWELL LLP

By: _____
Jon McNutt
*Counsel for Defendant RCS Safety, LLC dba
Roadway Construction Service*

Approved by Counsel as to form:

Dated:

GRAHAMHOLLIS APC

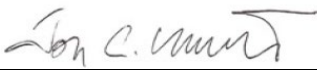
By:

Graham S.P. Hollis
Hali M. Anderson
Samara A. Bahu
Counsel for Plaintiff Kenneth Nesmith

Dated:

HUSCH BLACKWELL LLP

By:



Jon McNutt
*Counsel for Defendant RCS Safety, LLC dba
Roadway Construction Service*

EXHIBIT A

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

Kenneth Nesmith v. RCS Safety, LLC dba Roadway Construction Service

Los Angeles Superior Court Case Number: 23STCV18913

The Superior Court of the State of California, County of Los Angeles, authorized this Notice. It is not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

Please read this notice carefully. Your legal rights are affected whether you act or not.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against RCS Safety, LLC dba Roadway Construction Service (“Defendant”) for alleged wage and hour violations. The Action was filed by former employee of Defendant, Kenneth Nesmith (“Plaintiff”), and seeks relief for a class of all current or former non-exempt employees of Defendant who worked in California during the Class Period (August 9, 2019 through December 1, 2024) who do not opt out of the Settlement. These persons are called “Class Members.” Plaintiff also seeks penalties under the California Private Attorney General Act (“PAGA”) for all current or former non-exempt employees of Defendant who worked in California during the PAGA Period (August 9, 2022 to December 1, 2024). These persons are called “Aggrieved Employees.”

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

Based on the number of workweeks and pay periods you worked with Defendant, **your Individual Class Payment is estimated to be \$[INSERT] (less withholding) and your Individual PAGA Payment is estimated to be \$[INSERT]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work for Defendant during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked [INSERT] workweeks** during the Class Period and **you worked [INSERT] pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against

Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

1. **Do Nothing.** You do not have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period claims and PAGA Period penalty claims against Defendant.
2. **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Do Not Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is DATE	If you do not want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue the PAGA Released Claims (defined below).
Participating Class Members Can Object to	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement.

the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by DATE	The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on DATE. You do not have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by DATE	The amount of your Individual Class Payment and PAGA Payment (if any) depends on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you may challenge it by DATE. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action alleges claims for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to provide heat recovery periods; (4) failure to pay minimum, regular, and overtime wages; (5) failure to indemnify all necessary business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay all wages due upon separation of employment; (8) violation of Business & Professions Code §§ 17200, *et seq.*; (9) retaliation; (10) wrongful termination in violation of public policy; and (11) PAGA penalties for these alleged violations. Plaintiff is represented by the following attorneys in the Action: Graham S.P. Hollis, Hali M. Anderson, and Samara A. Bahu of Graham Hollis, APC ("Class Counsel").

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

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

So far, the Court has made no determination whether Plaintiff or Defendant is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced neutral mediator, David Rotman, Esq., in an effort to resolve the Action by settlement rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement

is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. Defendant Will Pay \$1,100,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement with an initial payment of 50% of the Gross Settlement within 45 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed. Thereafter, Defendant shall pay the remaining amount quarterly (25%) commencing one calendar quarter after the initial payment and the remaining amount (25%) one calendar quarter thereafter.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing.
 - a. Up to 33.33% of the Gross Settlement, or \$366,630 to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel has worked and incurred expenses on the Action without payment.
 - b. Up to \$7,500 for Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. In connection with this Settlement, the Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - c. Up to \$8,500 to the Administrator, Apex Class Action LLC, for services administering the Settlement.

- d. Up to \$25,000 for PAGA Penalties, with 65% allocated to the LWDA PAGA Payment and 35% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.
3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you do not cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name. You should consult the rules of the Fund for instructions on how to retrieve your money.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant and Released Parties.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant has agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Apex Class Action LLC (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member challenges over workweeks and/or pay periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in **Section 9** of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant based on the claims resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant, and each of their insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers of-attorney, and any individual or entity that could be jointly liable with Defendant from any claims, wages, premiums, fringes, liquidated damages, or penalties alleged or that could have been alleged against Released Parties arising out of the facts, circumstances, and primary rights at issue in the Operative Complaint and any amendments, including all claims for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to provide heat recovery periods; (4) failure to pay minimum, regular, and overtime wages; (5) failure to indemnify all necessary business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to timely pay all wages due upon separation of employment; and (8) violation of Business & Professions Code §§ 17200, *et seq.* Except as set forth in Paragraph 10 of this Notice, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the FEHA, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. PAGA Released Claims. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff,

Aggrieved Employees, the LWDA, and the State of California, will be barred from asserting PAGA claims against Defendant. The PAGA Released Claims are as follows:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant, and each of their insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers of-attorney, and any individual or entity that could be jointly liable with Defendant from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notices and ascertained in the course of the Action, including, all claims for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to provide heat recovery periods; (4) failure to pay minimum, regular, and overtime wages; (5) failure to indemnify all necessary business expenses; (6) failure to provide accurate itemized wage statements; and (7) failure to timely pay all wages due upon separation of employment. The PAGA Release will only release these claims during the PAGA Period, regardless of the Aggrieved Employee's decision to participate in the Class Settlement.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. **Individual Class Payments.** The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Class Period Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Class Period Workweeks worked by each individual Participating Class Member. Class Members whose employment with Defendant ended at any time from August 9, 2020, to **DATE** will be credited with six additional compensable Workweeks for purposes of determining the Participating Class Members' pro rata shares of the Net Settlement Amount as they are members of the Waiting Time Penalty Subclass.
2. **Individual PAGA Payments.** The Administrator will calculate Individual PAGA Payments by (a) dividing the Aggrieved Employees' 35% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.
3. **Workweek/Pay Period Challenges.** The number of Class Period Workweeks and/or PAGA Pay Periods you worked, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **DATE** to challenge the number of workweeks credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of workweeks and/or pay periods based

on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweek and/or pay period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defense Counsel. The Administrator's decision is final. You cannot appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who does not opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Nesmith v. RCS Safety, LLC, dba Roadway Construction Service* and include your identifying information (full name, address, telephone number or email address). You may make the request yourself or have a representative submit it on your behalf. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by DATE, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [insert] or the Court's website at

<http://www.lacourt.org/casesummary/ui/index.aspx>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel and/or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is DATE.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Nesmith v. RCS Safety, LLC, dba Roadway Construction Service* and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but do not have to, attend the Final Approval Hearing on DATE at TIME in Department 10 of the Los Angeles County Superior Court, located at Central District, Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. In all Civil departments and hearing types, the Court has remote video and audio courtroom appearance technology via LA CourtConnect ("LACC"). You may attend (or hire a lawyer to attend) either personally or virtually via LACC (<https://my.lacourt.org/laccwelcome>).

It is possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's or Court's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Plaintiff and Defendant have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at [insert]. You can also call or email Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to <http://www.lacourt.org/casesummary/ui/index.aspx> and entering the Case Number for the Action, Case No. 23STCV18913.

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

Class Counsel:

Graham S.P. Hollis (SBN 120577)
ghollis@grahamhollis.com
Hali M. Anderson (SBN 261816)
handerson@grahamhollis.com
Samara A. Bahu (SBN 351440)
sbahu@grahamhollis.com
3555 Fifth Avenue, Suite 200
San Diego, California 92103
Telephone: 619.692.0800
Facsimile: 619.692.0822

Settlement Administrator
Apex Class Action LLC

Address

Telephone:

Fax Number:

Email

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. Otherwise, you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

July 27, 2023

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Nora Steinhagen
nsteinhagen@grahamhollis.com
619.430.4674 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

RCS Safety, LLC. DBA Roadway Construction Service
Michelle Staley AFSOP
828 N. Banna Ave.
Glendora, CA 91741

RCS Safety, LLC. DBA Roadway Construction Service
4909 Lakewood Blvd, Ste 307
Lakewood, CA 90712-2436

RCS Safety, LLC. DBA Roadway Construction Service
900 S. Maple Ave
Montebello, CA 90640-5412

Re: Kenneth Nesmith's Wage and Hour Claims Against
RCS Safety, LLC. dba Roadway Construction Service

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

Erik Dos Santos

Nora Steinhagen

Alyssa Smith

Allison Schubert

Alex Kuner

Dawn M. Berry

Brisa Martinez

Taylor M. Gee

Dear Labor and Workforce Development Agency and RCS Safety, LLC. dba Roadway Construction Service:

Please be advised that Kenneth Nesmith ("Claimant") has retained our firm to represent him for claims against his former employer, RCS Safety, LLC. dba Roadway Construction Service ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims that the Company committed against him and all other aggrieved employees in California. Claimant provides this notice in accordance with the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code ("Labor Code") § 2699.3. Claimant intends to file a civil action to enforce his rights under the Labor Code and seeks compensation accordingly.

*Provisionally Licensed Lawyer

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Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent himself and all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period (“Aggrieved Employees”).

FACTUAL BACKGROUND

RCS Safety, LLC. d/b/a Roadway Construction Service is a California limited liability company that provides a range of traffic control services, including traffic control planning, providing traffic safety barricade services, obtaining city permits, performing traffic control flagging services and emergency traffic control response. The Company is registered in California and has its principal place of business in Montebello, California.

Claimant was employed with the Company as a Traffic Control Tech II from approximately July 7, 2022 until May 12, 2023. Claimant was typically scheduled to work five days a week, Monday through Friday, and typically worked between 40 to 55 hours per week. Claimant did not have a set schedule and received his job assignment the night before the day of his assignment. At all times, Claimant was a non-exempt employee and was paid an hourly wage of approximately \$26.18 per hour. As a Traffic Control Tech II, Claimant’s job duties included, but were not limited to, directing street traffic around construction sites, including closing streets during construction, and providing detour routes at various sites, including in the Los Angeles County area.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company (1) failed to provide Claimant and other Aggrieved Employees with legally compliant meal and rest periods, as well as failed to pay Aggrieved Employees meal and rest period premiums for non-compliant meal and rest periods; (2) failed to provide recovery periods and/or pay premium wages for non-compliant recovery periods; (3) failed to provide toilet and washing facilities; (4) failed to timely pay all minimum, regular, and/or overtime wages; (5) failed to reimburse for business expenses; (6) failed to timely pay Claimant and other former Aggrieved Employees all wages due and owing upon separation of employment; (7) failed to furnish Aggrieved Employees, including Claimant, with accurate itemized wage statements; (8) failed to maintain accurate records; and (9) engaged in retaliation against Claimant.

The Company required Claimant and, on information and belief, other Aggrieved Employees to work through meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, or did not allow them to take meal periods before the end of their fifth hour of work. During his employment with the Company, Claimant was hardly ever permitted to take a legally compliant meal period. More often than not, Claimant would be assigned to a job with only one coworker. Due to the nature of the work and the Company’s understaffing, Claimant could not leave his position to take a meal break. Claimant was not permitted to leave his job site since he was responsible for watching over and providing a closed area for contractors to work during construction, and leaving his post would mean endangering others. Despite this, the Company did not schedule sufficient workers to permit Claimant

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and Aggrieved Employees to take a compliant meal break without endangering others and being in violation of their work duties. When Aggrieved Employees did leave the worksite for a meal break, they were reprimanded for doing so. Even when three or four Aggrieved Employees were assigned to work a larger job site, Claimant and Aggrieved Employees were required to eat while working. The Company also does not keep record of meal periods on the few occasions that they are taken.

For the same reasons as those described above, the Company failed to provide Claimant and other Aggrieved employees with ten (10) minute rest breaks per every four hour work period, or major fraction thereof. Claimant and upon information and belief, other Aggrieved Employees, never received rest breaks because the demands of the job and insufficient staffing of job sites, which rendered it unsafe to leave a post and take an off-duty rest break.

Additionally, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees working outside in the sun with compliant recovery periods, because the Company did not provide them with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. Claimant and, on information and belief, other Aggrieved Employees typically worked outside during their shift. The temperature at Claimant's and other Aggrieved Employees' job sites frequently exceeded 80 degrees Fahrenheit. At times, Aggrieved Employees were forced to work in outdoor temperatures exceeding 100 degrees Fahrenheit. Nonetheless, the Company failed to provide off-duty recovery periods of not less than five (5) minutes to prevent heat illness. Additionally, Claimant and other Aggrieved Employees were not provided with tents, canopies, or any other source of shade, nor was natural shade typically available at the job sites. On information and belief, the Company did not have any written policy or practice addressing recovery periods, in violation of California law. Thus, Aggrieved Employees, including Claimant, did not have adequate shade available to take compliant recovery periods and rest from the sun.

Although Claimant and, on information and belief, other Aggrieved Employees did not receive legally compliant meal, rest, and/or recovery periods, the Company did not pay Claimant and other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Accordingly, the Company owes Claimant and other Aggrieved Employees a meal, rest, and/or recovery period premium for each workday that Claimant and other Aggrieved Employees were not provided with a compliant meal, rest, and/or recovery period.

Furthermore, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with toilet and washing facilities. Claimant and Aggrieved Employees were assigned to work at construction job sites that changed on a daily basis. The Company did not provide a separate toilet or washing facility, and there was no readily available transportation for Claimant and other Aggrieved Employees to access nearby toilet and washing facilities due to understaffing at sites.

Claimant and, on information and belief, other Aggrieved Employees were not paid all minimum, regular, and/or overtime wages owed for all the time actually worked on the designated paydays. Claimant and other Aggrieved Employees were not properly compensated for all the hours they worked

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because the Company required them to perform tasks before clocking in and after clocking out. The Company kept track of Claimant and other Aggrieved Employees' hours worked with handwritten time cards, and would input their start time as the time when they were dispatched from the warehouse to the job site. However, the Company instructed Claimant and other Aggrieved Employees to show up to the warehouse approximately 30 minutes before their time of dispatch so that they could prepare their truck and ensure it was loaded with water, ice, and equipment needed for the day. Claimant and other Aggrieved Employees were not compensated for this time spent under the Company's control before being dispatched to the work site. In addition, the Company would send Claimant and, on information and belief, other Aggrieved Employees, their job assignments for the next day the night before. Claimant and other Aggrieved Employees were not compensated for this time spent reviewing their job assignments.

The Company also failed to reimburse Claimant and, on information and belief, other Aggrieved Employees, for all necessary business expenses. Claimant and other Aggrieved Employees were required to use their personal cell phones to receive their daily job assignments and communicate with dispatch, among other things, but were not provided reimbursement by the Company.

As a direct result of the aforementioned Labor Code violations, the Company did not pay Claimant and, on information and belief, other Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and meal, rest, and recovery period premium wages. Claimant and other former Aggrieved Employees are therefore entitled to waiting time penalties pursuant to Labor Code § 203.

Claimant contends that the Company furnished Aggrieved Employees, including himself, with wage statements that do not comply with California law. Claimant alleges that the wage statements furnished to him and other Aggrieved Employees did not correctly show the information required by Labor Code § 226(a), including, but not limited to, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net actual wages earned. In fact, the wage statements issued by the Company do not list pay rates at all. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

As a direct result of the Company's illegal policies and procedures, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' actual time worked, the beginning and end of each meal period, and actual wages earned and paid, in violation of California law.

The Company also engaged in retaliation against Claimant and wrongfully terminated him in violation of Labor Code §§ 98.6 and 1102.5. Claimant made an inquiry to his union representative as to whether the Company could require him and other Aggrieved Employees to work on Saturdays. As a result of this call, the union representative spoke to a representative from the Company and discussed that

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this was not permitted. Upon information and belief, the Company terminated Claimant for making this inquiry, thus engaging in unlawful retaliation against Claimant.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and other Aggrieved Employees. All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories of liability discovered after the sending of this letter on behalf of himself and all other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons may include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to his civil complaint.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS
AND AUTHORIZE AND PERMIT REST PERIODS**
(Labor Code §§ 226.7, 512, and the "Meal Periods" and
"Rest Periods" sections of the Applicable IWC Wage Order)

Labor Code § 226.7(b) states, "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission..." Labor Code § 226.7(c) further states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Labor Code § 512(a) states, "[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...[and] shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." A meal period generally comports with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." (*Id.* at p. 1040 [internal citations omitted].)

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The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” Moreover, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.” The IWC Wage Order further states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

The “Rest Periods” section of the applicable IWC Wage Order provides, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Furthermore, “[i]f 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 workday that the rest period is not provided.”

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 267, 269.)

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work, and did not authorize and permit Claimant and other Aggrieved Employees to take legally compliant rest periods, as required by California law. The Company failed to pay Claimant and, on information and belief, other Aggrieved Employees one hour of premium wages for each day a compliant meal and/or rest period was not provided. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

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FAILURE TO PROVIDE RECOVERY PERIODS

(Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395)

Labor Code § 226.7(a) states that “‘recovery period’ means a cooldown period afforded an employee to prevent heat illness.” Labor Code § 226.7(b) further states, “[a]n employer shall not require an employee to work during a...recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” If an employer fails to provide an employee with a recovery period in accordance with state law, “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the ... recovery period is not provided.” (Labor Code § 226.7(c).)

California Code of Regulations, Title 8, § 3395(d)(1) states that: “Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling” California Code of Regulations, Title 8, § 3395(d)(3) further states that “[e]mployees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times.”

California Code of Regulations, Title 8, § 3395(i) further provides, “[t]he employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request.”

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with compliant recovery periods. The Company also did not provide the employees with off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. The Company likewise failed to establish, implement, and maintain an effective heat illness prevention plan. Even though Claimant and Aggrieved Employees were not authorized or permitted to take lawful recovery periods, the Company did not pay the appropriate recovery period premium wages, in violation of Labor Code § 226.7 and California Code of Regulations, Title 8, § 3395(d). Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO PROVIDE TOILET AND WASHING FACILITIES

(Labor Code §§ 6300-6400 *et seq.* and California Code of Regulations, Title 8, §§ 1526, 1527 and Title 29 § 1296.51, and the “Meal Periods” Section of IWC Wage Order 16-2001)

Labor Code sections 6300-6400 *et seq.* require that all employers take reasonable steps to provide a safe and healthful workplace. Labor Code § 6427 provides that any employer who violates any occupational safety or health standard, order, or special order and the violation is specifically determined

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not to be of a serious nature, may be assessed a civil penalty of up to twelve thousand four hundred seventy-one dollars for each violation.

California Code of Regulations, Title 8, § 1526(a) and Title 29, § 1296.51(c) provide that at construction jobsites, a minimum of one separate toilet facility shall be provided. California Code of Regulations, Title 8, § 1527(c) provides that a minimum of one washing station be provided that has an adequate supply of water for effective washing with a readily available supply of soap.

The Company failed to provide any separate toilet and washing facility, and there was no readily available transportation for Claimant to any nearby toilet and washing facility. As such, the Company violated 8 CCR §§1526-27 and 9 CCR § 1296.51.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the
“Minimum Wages” and “Hours and Days of Work” sections of the Applicable IWC Wage Order)

Labor Code § 204 establishes an employee’s fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code § 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code § 1197.1 provides that, “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203...”

Labor Code § 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code § 510 provides, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less

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than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code § 1194(a) mandates that “...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 attorney’s fees, and costs of suit.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code § 1194.2.

Labor Code § 558 provides that “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty” of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to pay Claimant and, on information and belief, other Aggrieved Employees all minimum, regular, and overtime wages for all time engaged in work on behalf of the Company, including before clocking in for their scheduled shifts. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Labor Code § 2802 and the “Uniforms and Equipment” section of the applicable IWC Wage Order)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code § 2802(b) states, “[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

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As set forth above, the Company required Claimant and other Aggrieved Employees to use their personal cell phones in the discharge of their job duties without reimbursement. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

**FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF
EMPLOYMENT**

(Labor Code §§ 201, 202, and 203)

Labor Code § 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code § 202 states, in pertinent part: "If 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."

Labor Code § 203(a) further states, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

As set forth above, the Company violated these Labor Code sections by not paying Claimant and other Aggrieved Employees all minimum, regular, and overtime wages owed, as well as meal, rest, and recovery premium wages owed, within the required time upon separation of their employment. Based on information and belief, Claimant further contends that the Company did not pay former Aggrieved Employees the required waiting time penalties for the late payment of wages. Claimant will pursue all available remedies for these alleged violations on behalf of himself and all other former Aggrieved Employees of the Company to the extent allowed by the law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the "Records" section of the Applicable IWC Wage Order)

Labor Code § 226(a) states in pertinent part: "An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (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... (8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee..."

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The “Records” section of the applicable IWC Wage Order further provides, in pertinent part: “Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.”

Labor Code § 226(e)(1) provides: “An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

Labor Code § 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours actually worked by the employee, any applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 1174, 1174.5, and the “Records” section of the Applicable IWC Wage Order)

Labor Code § 1174 states, “[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period,

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per Aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

As set forth above, the Company violated its recordkeeping requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies for the Company's violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

RETALIATION

(Labor Code §§ 98.6 and 1102.5)

Labor Code § 98.6(a) states, "[a] person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant ... made a written or oral complaint that he or he is owed unpaid wages, ... or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her." In addition to other remedies available, an employer who violates Labor Code § 98.6 is "liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation." (Labor Code § 98.6(a)(3).)

Labor Code § 1102.5(b) states, "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." In addition to other penalties, "an employer that is a corporation or limited liability Companies is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section." (Labor Code § 1102.5(f).)

As set forth above, the Company engaged in retaliation against Claimant and wrongfully terminated him after he made an inquiry to his union regarding the legality of requiring him to work on Saturdays. Claimant will pursue all available remedies for the Company's violations to the extent allowed by law.

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**CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE AND THE APPLICABLE
IWC WAGE ORDER**

(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Labor Code § 558.1(a) further states that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” This includes the owners, officers, directors, or managing agents of the employer. (Labor Code § 558.1(b).)

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: “(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable

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penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 2802, and relevant IWC Wage Orders.

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to provide legally compliant meal, rest, and/or recovery periods and/or timely pay premium wages; failing to timely pay all minimum, regular, and/or overtime wages; failing to reimburse for necessary business expenses; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; and engaging in retaliation. As a result, the Company is liable for civil penalties under Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to, those stated herein for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages, and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Under Labor Code § 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney’s fees and costs. Pursuant to Labor Code § 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs, and attorney’s fees, and he will continue to incur such costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of himself and all other Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated, and continues to violate, the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a

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representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Respectfully,

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

Nora Steinhagen

EXHIBIT 3

EXHIBIT 4

Appointed as Class Counsel¹ for the following wage and hour employment law cases:

United States District Court - Central District:

- *Corral v. Lifecare Solutions*, settled for \$3 million on behalf of approximately 270 class members, and Judge Olguin awarded 30% in fees.
- *Corral v. Staples the Office Super Store, LLC.*, settled for \$800,000.00 on behalf of approximately 2,289 class members, and Judge Scarsi awarded 33.33% in fees.
- *Ellis v. Pacific Bell Telephone Co.*, settled for \$3.1 million on behalf of approximately 84 class members, and Judge Carney awarded 33.3% in fees.
- *Green v. Lawrence Service Co.*, settled for \$60,000.00 on behalf of approximately 295 class members, and Judge Kronstadt awarded \$141,659.07 in fees.
- *Madera v. Universal Alloy Corporation*, settled for \$4.75 million on behalf of approximately 744 class members, and Judge Selna awarded 25% in fees.
- *Potter v. Big Tex Trailer Manufacturing, Inc.*, settled for \$972,391.68 on behalf of approximately 104 class members, and Judge Gutierrez awarded 33% in fees.
- *Rodriguez v. Old Dominion Freight Line, Inc.*, settled for \$3.4 million on behalf of approximately 76 class members, and Judge Fischer awarded 27.5% in fees.
- *Valentine v. Rehabilitation Center of Santa Monica Holding Co.*, settled for \$950,000.00 on behalf of approximately 4,560 class members, and Judge Kronstadt awarded 25% in fees.
- *Weaver v. Hallmark Marketing Corp.* settled for \$5.625 million on behalf of approximately 3,846 class members, and Judge Fairbanks awarded 33% in fees.

United States District Court – Eastern District:

- *Milburn v. Petsmart, Inc.*, settled for \$1.35 million on behalf of approximately 2,984 class members, and Judge Drozd awarded 33% in fees.
- *Osegueda v. Northern California Inalliance*, settled for \$225,000.00 on behalf of approximately 271 class members, and Judge Shubb awarded 33.33% in fees.
- *Stoddart v. Express Services, Inc.*, settled for \$10 million on behalf of approximately 145,548 class members, and Judge Mueller awarded 25% in fees.

¹ List includes cases filed by Graham Hollis, A.P.C., as well as its predecessor entities. It also includes cases where other law firms were appointed as co-class counsel.

United States District Court – Northern District:

- *Aston v. United Parcel Services, Inc.*, settled for \$490,000.00 on behalf of approximately 2,000 class members, and Judge White awarded 33.33% in fees.
- *Delatorre v. Johnson Controls, Inc.*, settled for \$2.8 million on behalf of approximately 1,441 class members, and Judge Grewal awarded 25% in fees.
- *Fong v. Regis Corporation*, settled for \$5.75 million on behalf of approximately 5,573 class members, and Judge Chhabria awarded 33% in fees.
- *Jimenez v. Menzies Aviation*, settled for \$1.25 million on behalf of 5,175 class members, and Judge Orrick awarded 33% in fees.
- *Moore v. Petsmart, Inc.*, settled for \$10 million on behalf of approximately 19,701 class members, and Judge Davila awarded 27% in fees.

United States District Court – Southern District:

- *Birch v. Office Depot, Inc.*, settled for \$14 million on behalf of approximately 16,722 class members, and Judge Sabraw awarded 40% in fees.
- *Ceron v. Flagship Facility Services, Inc.*, settled for \$2 million on behalf of approximately 6,922 class members, and Judge Sammartino awarded 30% in fees.
- *Cook v. Tiffany and Company*, settled for \$4,148,270.00 on behalf of approximately 1,584 class members, and Judge Lorenz awarded 24.8% in fees.
- *Ferguson v. Winston Retail Solutions*, settled for \$750,000.00 on behalf of approximately 660 class members, and Judge Battaglia awarded 33.33% in fees.
- *Lopez v. GAT Airline Ground Support, Inc.*, settled for \$600,000.00 on behalf of approximately 1,394 class members, and Judge Battaglia awarded 25% in fees.
- *Pool v. Ameripark, LLC*, settled for \$1.75 million on behalf of approximately 1,024 class members, and Judge Burns awarded 25% in fees.
- *Singer v. Becton Dickinson and Co.*, settled for \$1 million on behalf of approximately 266 class members, and Judge Gonzalez awarded 33.33% in fees.

Superior Court for the County of Alameda:

- *Gray v. Moz Designs, Inc.*, settled for \$124,000.00 on behalf of approximately 33 aggrieved employees, and Judge Lee awarded 33.33% in fees.
- *Hobdy v. Landmark Event Staffing Services, Inc.*, settled for \$245,100.00 on behalf of approximately 3,671 class members, and Judge Hernandez, Jr., awarded 33.33% in fees.
- *Lee v. Sutter Bay Medical Foundation*, settled for \$995,000.00 on behalf of approximately 5,403 class members, and Judge Petrou awarded 33.33% in fees.
- *Pena v. American National Insulation, LLC.*, settled for \$883,189.09 on behalf of approximately 711 aggrieved employees, and Judge Brand awarded 33.33% in fees.
- *Roberson v. Center for the Elders' Independence*, settled for \$1.15 million on behalf of approximately 527 class members, and Judge Smith awarded 30% in fees.
- *Trento v. US Security Associates*, settled for \$6.5 million on behalf of approximately 14,700 class members, and Judge Seligman awarded 27.69% in fees.

Superior Court for the County of Contra Costa:

- *Stevenson v. Falcon Critical Care Transport*, settled for \$233,853.00 on behalf of approximately 46 class members, and Judge Goode awarded 29% in fees.

Superior Court for the County of Fresno:

- *Drake v. Midvalley Disposal, LLC* before Judge Snauffer, settled for \$150,000.00 on behalf of approximately 315 class members, and Judge McGuire awarded 28% in fees.
- *Kenner v. Oak Harbor Freight Lines, Inc.*, settled for \$1.85 million on behalf of approximately 216 class members, and Judge Snauffer awarded 27% in fees.
- *Parmelee v. Driveline Retail Merchandising, Inc.*, settled for \$1 million on behalf of approximately 1,261 class members, and Judge Kapetan awarded 33.33% in fees.

Superior Court for the County of Kern:

- *McGough v. Love's Travel Stops & Country Stores, Inc.*, settled for \$3 million on behalf of approximately 1,638 class members, and Judge Schuett awarded 33.33% in fees.

Superior Court for the County of Los Angeles:

- *Agredano v. Southwest Water Company*, settled for \$1.22 million on behalf of approximately 125 class members, and Judge Nelson awarded 33.33% in fees.
- *Calhoun v. General Petroleum Corp.*, settled for \$950,000.00 on behalf of approximately 300 class members, and Judge Dunn awarded 40% in fees.
- *Cartwright v. Envoy Air, Inc.*, settled for \$2.5 million on behalf of approximately 2,354 class members, and Judge Highberger awarded 33.33% in fees.
- *Escalante v. Urth Payroll Services, Inc.*, settled for \$625,000.00 on behalf of approximately 2,115 aggrieved employees, and Judge Traber awarded 40% in fees.
- *Fernandez v. Prime Healthcare Services, Inc.*, settled for \$145,000.00 on behalf of approximately 18 aggrieved employees, and Judge Keeny awarded 33.33% in fees.
- *Frugard v. Unified Protective Services, Inc.*, is an ongoing case which has been certified as a class action by Judge Johnson.
- *Garcia v. Menzies Aviation, Inc.*, settled for \$1 million on behalf of approximately 1,800 class members, and Judge Rosenblatt awarded 33.33% in fees.
- *Gordon v. Accountable Healthcare Staffing, Inc.*, settled for \$900,000.00 on behalf of approximately 560 class members, and Judge Buckley awarded 33.33% in fees.
- *Hendrix v. Lucky Seven Dragons, Inc.*, settled for \$225,000.00 on behalf of approximately 336 class members, and Judge Riff awarded 33.33% in fees.
- *Iskandaryan v. Casual Male Retail Group, Inc.*, settled for \$950,000.00 on behalf of approximately 716 class members, and Judge Stern awarded 33.33% in fees.
- *Jackson v. Sourcecorp BPS Inc.*, settled for \$1.875 million on behalf of approximately 481 class members, and Judge Nelson awarded 33.33% in fees.
- *Kirkpatrick v. Petco Animal Supplies Stores, Inc.*, settled for \$9.75 million on behalf of approximately 15,962 class members, and Judge Highberger awarded 33.33% in fees.
- *Lopez v Infosys Limited*, settled for \$2.72 million on behalf of approximately 4,444 class members, and Judge Bowick awarded 33.33 in fees.
- *Lucarini v. Dresser, Inc.*, settled for \$1.024 million on behalf of approximately 78 class members, and Judge Mohr awarded 39.55% in fees.

- *Magana-Mead v. LKQ Corporation*, was settled for \$1.15 million on behalf of 303 class members, and Judge Nelson awarded 33% in fees.
- *Mahoney v AT&T Corp.*, settled for \$13,894,098.62 on behalf of approximately 719 class members, and Judge Elias awarded 33.33% in fees.
- *Quinones v. Atria Management Company, LLC*, settled for \$1 million on behalf of approximately 15,027 class members, and Judge Buckley awarded 33.33% in fees.
- *Ralda v. Smart & Final Stores, LLC*, settled for \$2 million on behalf of approximately 3,104 class members, and Judge Kuhl awarded 33.33% in fees.
- *Rodriguez v. Atrium Hospitality LP*, settled for \$1,170,000.00 on behalf of approximately 1,467 class members, and Judge Seigle awarded 33.33% in fees.
- *Solaberrieta v. Baker Hughes Oilfield Operations*, settled for \$3.5 million on behalf of approximately 295 class members, and Judge Wiley awarded 33.33% in fees.
- *Taylor v. Cross Country Support Services*, settled for \$582,000.00 on behalf of 581 class members, and Judge Nelson awarded 33.33% in fees.
- *Valentine v. Rehabilitation Center of Santa Monica*, settled for \$2.050 million on behalf of 7,072 class members, and Judge Palazuelos awarded 33% in fees.
- *Valles v. Anthony, Inc.*, settled for \$2.858 million on behalf of 658 class members, and Judge Sadvig awarded 33.33% in fees.
- *Walker v. Favorite Healthcare Staffing, Inc.*, settled for \$3.65 million on behalf of approximately 7,290 class members, and Judge Iwasaki awarded 33% in fees.
- *Whittington v. Eureka Restaurant Group, LLC*, settled for \$200,000.00 on behalf of 3,883 class members, and Judge Hill awarded 33% in fees.
- *Williams v. One Legacy*, settled for \$1.2 million on behalf of approximately 145 class members, and Judge Johnson awarded 33% in fees.
- *Wright v. AMF Bowling Centers, Inc.*, settled for \$6.35 million on behalf of approximately 4,914 class members, and Judge Duffy-Lewis awarded 28% in fees.
- *Wright v. Menzies Aviation, Inc.*, was certified as a class action by Judge Weintrob and was consolidated with *Jimenez v. Menzies Aviation, Inc.* for settlement purposes.

Superior Court for the County of Orange:

- *Bernardo v. Firstelement Fuel, Inc.*, settled for \$751,000.00 on behalf of approximately 139 aggrieved employees, and Judge Claster awarded 30% in fees.
- *Chima v. Beckman Coulter, Inc.*, settled for \$225,000.00 on behalf of approximately 36 class members, and Judge Wilson awarded 35% in fees.
- *ClubCorp Wage and Hour Cases*, settled for \$6 million on behalf of approximately 3,554 class members, and Judge Claster awarded 33.33% in fees.
- *Collins v. The Stephouse Recovery, Inc.*, settled for \$1.2 million on behalf of approximately 150 class members, and Judge Claster awarded 35% in fees.
- *Duarte v. Rainbow Disposal Co., Inc.*, settled for \$1.6 million on behalf of approximately 110 class members, and Judge Andler awarded 40% in fees.
- *Flannery v. AGR Group California*, settled for \$1,324,937.00 on behalf of approximately 5,182 class members, and Judge Andler awarded 33% in fees.
- *Jenkins v. The Mentor Network, Inc.*, settled for \$1.625 million on behalf of approximately 1,050 class members, and Judge Perkins awarded 33% in fees.
- *Payton v. Atlantic Aviation Investors, Inc.*, settled for \$1 million on behalf of approximately 162 class members, and Judge Stock awarded 40% in fees.
- *Parnell v. Hart-Hanks Shoppers, Inc.*, settled for \$600,000.00 on behalf of approximately 169 class members, and Judge Andler awarded 33.33% in fees.
- *Sheehan v. Applied Medical Products*, settled for \$2.75 million on behalf of approximately 2,012 class members, and Judge Claster awarded 33.33% in fees.
- *Valenzuela v. Enver Solar, Inc.*, settled for \$575,000.00 on behalf of approximately 1,440 class members, and Judge Sanders awarded 35% in fees.

Superior Court for the County of Riverside:

- *Becerra v. Moncler USA Retail, LLC.*, settled for \$447,744.15 on behalf of approximately 169 class members, and Judge Riemer awarded 33% in fees.
- *Digiacomio v. Castelli's Ristorante*, settled for \$225,000.00 on behalf of approximately 35 class members, and Judge Waters awarded 33% in fees.
- *Leonard v. ABTTC, Inc.*, settled for \$2.5 million on behalf of approximately 336 class members, and Judge Riemer awarded 33% in fees.

- *Loudon v. DHSE, Inc.*, (Representative Action), settled for \$650,000.00 on behalf of approximately 860 aggrieved employees, and Judge Waters awarded 33.33% in fees.
- *Steepe v. Responsible Medical Solutions Corp.*, settled for \$629,147.61 on behalf of approximately 273 class members, and Judge Riemer awarded 30.6% in fees.
- *Vest v. Scher Tire, Inc.*, settled for \$3,363,396.00 on behalf of approximately 795 class members, and Judge Waters awarded 33.33% in fees.

Superior Court for the County of Sacramento:

- *Abella v. GHC OF SAC-SNF LLC*, settled for \$1.35 million on behalf of approximately 5,484 class members, and Judge Mesiwala awarded 33.33% in fees.
- *Johnson v. PMC Southwest, LLC*, settled for \$2.25 million on behalf of approximately 377 class members, and Judge Krueger awarded 33.33% in fees.
- *Mendez v. SSP America SMF, LLC*, settled for \$650,000.00 on behalf of 173 class members, and Judge Damrell awarded 35% in fees.
- *Muniz/Wine v. Sutter Valley Hospitals*, settled for \$14,250,000.00 on behalf of approximately 25,995 class members, and Judge Damrell awarded 33.33% in fees.

Superior Court for the County of San Bernardino:

- *Alvarez v. Core States, Inc.*, settled for \$530,000.00 on behalf of approximately 45 class members, and Judge Garza awarded 40% in fees.
- *Booher v. The Poma Companies*, settled for \$650,000.00 on behalf of approximately 75 class members, and Judge Plotkin awarded 44% in fees.
- *Bracy v. Speedy Cash*, settled for \$237,320.00 on behalf of approximately 222 class members, and Judge Kayashima awarded 22.69% in fees.
- *Christensen v. Heartland Express Inc. of Iowa*, settled for \$10.25 million on behalf of approximately 1,717 class members and 984 members of a FLSA collective, and Judge Cohn awarded 33.33% in fees.
- *Jeffries v. Praxair Services, Inc.*, settled for \$373,000.00 on behalf of approximately 23 class members, and Judge Garza awarded 35% in fees.
- *Malone v. Praxair, Inc.*, settled for \$900,000.00 on behalf of approximately 57 class members, and Judge Davis awarded 40% in fees.

- *McCray v. Wireless World, LLC et al.*, settled for \$1million on behalf of approximately 1,300 class members, and Judge Pacheco awarded 40% in fees.
- *Sala v. Personnel Staffing*, settled for \$40,000.00 on behalf of approximately 47 class members, and Judge Cohn awarded 40% in fees.
- *Sala v. Radial South, L.P.*, settled for \$350,000.00 on behalf of 251 class members, and Judge McCarville awarded 40% in fees.
- *Salazar v. PODS Enterprises, LLC.*, settled for \$1,360,632.00 on behalf of approximately 654 class members, and Judge Ortiz awarded 33.33% in fees.
- *Scaglione v. M.O. Dion & Sons, Inc.*, settled for \$585,000.00 on behalf of approximately 123 class members, and Judge Garza awarded 30% in fees.
- *Taylor v. Penske Logistics LLC.*, settled for \$1,455,000.00 on behalf of approximately 5,791class members, and Judge David Cohn awarded 33% in fees.

Superior Court for the County of San Diego:

- *Andrew v. Coronado Brewing Company, INC.*, settled for \$650,000.00 on behalf of approximately 635 class members, and Judge Freestone awarded 33.33% in fees.
- *Arriaga v. International Coffee & Tea*, settled for \$1.25 million on behalf of 479 class members, and Judge Bacal awarded 33.33% in fees.
- *Baker v. Select Comfort Retail Corp.*, settled for \$1.2 million on behalf of approximately 426 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Barron v Green Farms, Inc.*, settled for \$650,000.00 on behalf of approximately 154 class members, and Judge Pollak awarded 33.33% in fees.
- *Basile v. Aaron Brothers, Inc.*, settled for \$750,000.00 on behalf of approximately 2,000 and Judge Katz awarded 32.44% in fees.
- *Bergman v. BJS&T Enterprises, Inc.*, settled for \$200,000.00 on behalf of 99 class members, and Judge Frazier awarded 33.33% in fees.
- *Berry v. Sizzling Platter, LLC*, settled for \$950,000.00 on behalf of approximately 2,654 class members, and Judge Frazier awarded 33% in fees.
- *Broadnax v. Amazing Courier Express Services, LLC.*, settled for \$1.15 million on behalf of approximately 639 class members, and Judge Mangione awarded 33% in fees.

- *Carson v. Downtown San Diego Partnership Clean and Safe*, settled for \$200,000.00 on behalf of 99 aggrieved employees, and Judge Bacal awarded 33.33% in fees.
- *Chavez v. Real Time Staffing Services, Inc.*, settled for \$1.9 million on behalf of approximately 3,120 class members, and Judge Medel awarded 35% in fees.
- *Clancy v. Scripps Health*, settled for \$6.4 million on behalf of approximately 124 class members, and Judge Meyer awarded 33% in fees.
- *Costa v. Altman Specialty Plants, Inc.*, settled for \$2.4 million on behalf of approximately 4,414 class members, and Judge Hayes awarded 33.33% in fees.
- *Dadafshar v. KT Hotels, LLC, dba Pendry Hotel*, settled for \$515,000.00 on behalf of 892 class members, and Judge Pollack awarded 33.3% in fees.
- *De La Rosa v. Quten Research Institute, LLC*, settled for \$450,000.00 on behalf of approximately 402 class members, and Judge Meyer awarded 33.33% in fees.
- *Demers v. Hotcakes No. 3, Inc.*, settled for \$150,000.00 on behalf of approximately 300 class members, and Judge Nevitt awarded 33% in fees.
- *Dew v. Minegar Contracting, Inc.*, settled for \$525,150.00 on behalf of approximately 270 class members, and the Judge Sturgeon awarded 35% in fees.
- *Downey v. Sears Roebuck and Co. (Representative Action)*, settled for \$875,000.00 on behalf of approximately 1,200 aggrieved employees, and Judge Sturgeon awarded 33.33% in fees.
- *Escoto-Miranda v. Evans Tire & Service Centers, Inc.*, settled for \$800,000.00 on behalf of approximately 450 class members, and Judge Strauss awarded 33% in fees.
- *Falcon v. Flight Suits, Inc.*, settled for \$450,000.00 on behalf of approximately 101 class members, and Judge Denton awarded 33.33% in fees.
- *Fay v Cement Cutting, Inc.*, settled for \$720,000.00 on behalf of approximately 376 class members, and Judge Bacal awarded 33.33% in fees.
- *Fennessey v. Round Table Pizza, Inc.*, settled for \$2.125 million on behalf of approximately 16,333 class members, and Judge Lewis awarded 28% in fees.
- *Frayre v. United Parcel Services Supply Chain Services, Inc.*, settled for \$494,000.00 on behalf of approximately 55 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Garcia v. Task Ventures, LLC*, settled for \$822,856.50 on behalf of approximately 2,700 class members, and Judge Wohlfeil awarded 40% in fees.

- *Geilenfeldt v. EDF Renewable Energy, Inc.*, settled for \$2.5 million on behalf of approximately 144 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Gonzalez v. Coronado Yacht Club*, settled for \$330,000.00 on behalf of approximately 193 class members, and Judge Mangione awarded 33.33% in fees.
- *Headley v. Professional Maintenance Systems, Inc.*, settled for \$3.15 million on behalf of approximately 3,851 class members, and Judge Frazier awarded 30% in fees.
- *Huerta v. Venture Petroleum Company, Inc.*, settled for \$300,000.00 on behalf of approximately 513 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Irmen v. Raphael's Party Rentals*, settled for \$1 million on behalf of approximately 845 class members, and Judge Lewis awarded 40% in fees.
- *Johnson v. The SoCo Group, Inc.*, settled for \$895,000.00 on behalf of approximately 218 class members, and Judge Lewis awarded 33.33% in fees.
- *Julio v. L&M Tire Company, Inc.*, settled for \$1.85 million on behalf of approximately 1,087 class members, and Judge Barton awarded 33% in fees.
- *Lopez v. Struc Steel, Inc.*, settled for \$55,000.00 on behalf of approximately 30 aggrieved employees, and Judge Joel R. Wohlfeil awarded 35% in fees.
- *Loveless v ASM Affiliates*, settled for \$750,000.00 on behalf of approximately 276 class members, and Judge Styn awarded 33.33% in fees.
- *Maasrani v. International Hotel Associates No. 11 LLC*, settled for \$540,000.00 on behalf of approximately 140 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Madriz v. North County Ford, Inc.*, settled for \$188,000.00 on behalf of approximately 45 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Mandell v. Diversified Communications Services, Inc.* (Representative Action), settled for \$50,000.00 on behalf of approximately 55 aggrieved employees, and Judge Frazier approved 33.33% in fees.
- *Martinez v. San Diego Auto Scrubber, Inc.*, settled for \$500,000.00 on behalf of approximately 148 class members, and Judge Hayes awarded 33.33% in fees.
- *Morales v. Sony Electronics, Inc.*, settled for \$450,100.00 on behalf of approximately 4,742 class members, and Judge Styn awarded 65.82% in fees.
- *Moreno v. Providence Group, Inc.*, settled for \$775,000.00 on behalf of approximately 486 class members, and Judge Frazier awarded 30% in fees.

- *Nathan v. OS Restaurant Services, LLC*, settled for \$450,000.00 on behalf of approximately 748 class members and aggrieved employees, and Judge Keri Kats awarded 33% in fees.
- *Parvizi v. Classic Residence Management, LP*, settled for \$1 million on behalf of approximately 1,409 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Pham v. George's at the Cove, Inc. dba George's at the Cove #4032*, settled for \$340,000.00 on behalf of approximately 519 class members, and Judge Bacal awarded 33.33% in fees.
- *Pina v. Paradise Wings Enterprise*, settled for \$150,000.00 on behalf of approximately 248 class members, and Judge Taylor awarded 33.33% in fees.
- *Robles v. Jetro Holdings, LLC.*, settled for \$4,100,000.00 on behalf of approximately 6,183 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Sanchez v. Evans Tire and Service Centers, Inc.*, settled for \$750,000.00 on behalf of approximately 401 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Serrano v KSL Corona, L.P.*, settled \$325,000.00 on behalf of approximately 261 aggrieved employees, and Judge Meyer awarded 33.33% in fees.
- *Solis v. Check Agencies of California, Inc.*, settled for \$475,000.00 on behalf of approximately 559 class members, and Judge Taylor awarded 35% in fees.
- *Spriggs v. Ortiz Corporation*, settled for \$300,000.00 on behalf of approximately 198 class members, and Judge Katz awarded 33.33% in fees.
- *Thompson v. LawInfo.com, Inc.*, settled for \$150,000.00 on behalf of approximately 115 class members, and Judge Enright awarded 33.33% in fees.
- *Twombly v. Del Frisco's*, settled for \$950,000.00 on behalf of approximately 1,800 aggrieved employees, and Judge Sturgeon awarded 33.33% in fees.
- *Uriostegui v. Pacific Drive-Ins, LLC.*, settled for \$590,000.00 on behalf of approximately 2,645 class members, and Judge Caietti awarded 33.33% in fees.
- *Vega v. Scoobeez*, settled for \$2,512,390.91 on behalf of approximately 5,271 class members, and Judge Whitney awarded 33.33% in fees.
- *Well v. Hooters of America, Inc.*, settled for \$1.35 million on behalf of approximately 2,300 class members, and Judge Wohlfeil awarded 35% in fees.
- *Zamorano v. Piperin Corporation*, settled for \$121,887.00 on behalf of approximately 51 class members, and Judge Pollack awarded 33.33% in fees.

Superior Court for the County of San Francisco:

- *Casas v. Pacific Bell Telephone Co.*, settled for \$6 million on behalf of approximately 464 class members, and Judge Goldsmith awarded 23% in fees.
- *Simpkins v. GPS Consumer Direct, Inc.*, settled for \$1.6 million on behalf of approximately 3,295 class members, and Judge Cheng awarded 33.33% in fees.

Superior Court for the County of San Joaquin:

- *Tunchez/Cooper v. Thomas Cuisine Management, LLC.*, settled for \$3,350,000.00 on behalf of approximately 1,783 class members, and Judge Lee awarded 33.33% in fees.

Superior Court for the County of San Luis Obispo:

- *Hernandez v. All Ways Clean* (Representative Action), settled for \$205,000.00 on behalf of approximately 642 aggrieved employees, and Judge Coates granted 35% in fees.
- *Martinez v. Zoo Med Laboratories*, settled for \$600,000.00 on behalf of approximately 330 aggrieved employees, and Judge Coates awarded 33% in fees.

Superior Court for the County of Santa Barbara:

- *Ramirez v Baker Hughes Oilfield Operations (Baker Hughes Wage and Hour Cases)*, settled for \$2.75 million on behalf of 165 class members, and Judge Anderle awarded 33.33% in fees.

Superior Court for the County of Santa Clara:

- *Adami v. Prime Now LLC.*, settled for \$4.3 million on behalf of 44,172 class members, and Judge Zayner awarded 33.33% in fees.
- *Allison v. Super Zen, Inc.*, settled for \$235,300.00 on behalf of approximately 26 class members, and Judge Lucas awarded 33.33% in fees.
- *Edwards v. Absolute Senior Solutions, et al.*, settled for \$244,000.00 on behalf of approximately 134 aggrieved employees, and Judge Zayner awarded 33.33% in fees.
- *Hefner v. Solary, LLC.*, settled for \$750,000.00 on behalf of approximately 67 class members, and Judge Kulkarni awarded 33.33% in fees.
- *Ledbetter v. Entrepreneurial Ventures, Inc.*, settled for \$1.8 million on behalf of approximately 754 class members, and Judge Overton awarded 33.33% in fees.

- *Letuligasenoa v. International Paper Company*, settled for \$4.5 million on behalf of approximately 3,786 class members, and Judge Errand awarded 33.33% in fees with a 1.47 multiplier.
- *Suarez v. First Alarm Security & Patrol, Inc.*, settled for \$7.25 million on behalf of approximately 3,786 class members, and Judge Walsh awarded 33.33% in fees.
- *Subia v. National Securities Industries, Inc.*, settled for \$275,000.00 on behalf of approximately 187 class members, and Judge Lucas awarded 30% in fees.

Superior Court for the County of Solano:

- *Apodaca v. Randstad US, LLC.*, settled for \$275,000.00 on behalf of approximately 675 aggrieved employees, and Judge Gizzi awarded 33.33% in fees.
- *O'Neal v. Old Navy, LLC.*, settled for \$2.5 million on behalf of approximately 22,652 class members, and Judge Jones awarded 25% in fees.
- *Roberson v. Ghiringhelli Specialty Foods*, settled for \$375,000.00 on behalf of approximately 1,324 aggrieved employees, and Judge Getty awarded 33.33% in fees.
- *Saechao v. Pla-Fit Franchise d.b.a. Planet Fitness*, settled for \$325,000.00 on behalf of approximately 149 class members, and Judge Mattice awarded 25% in fees.
- *Stafford v. Dollar Tree Stores, Inc.*, settled for \$4.6 million on behalf of approximately 7,737 class members, and Judge Beeman awarded 33.33% in fees.
- *Stoddart v. Heavy Metal Iron, Inc.*, settled for \$150,000.00 on behalf of approximately 17 aggrieved employees, and the Judge Carringer awarded 25% in fees.
- *Turnage v. Park Management Corporation*, settled for \$400,000.00 on behalf of approximately 214 class members, and Judge Daniels awarded 33.33% in fees.

Superior Court for the County of Tulare:

- *Lopez v. Ruiz Food Products, Inc.*, settled for \$547,500.00 on behalf of approximately 2,233 class members, and Judge Hillman awarded 33% in fees.

Superior Court for the County of Ventura:

- *Jackson v. Vulcan Materials Co.*, settled for \$800,000.00 on behalf of approximately 103 class members, and Judge Bysshe awarded 37.5% in fees.

- *Laux v. Van Nuys Skyways, Inc.*, settled for \$800,000.00 on behalf of approximately 70 class members, and Judge Riley awarded 35% in fees.

EXHIBIT 5

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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 KENNETH NESMITH, on behalf of himself
and other similarly situated employees in the
11 State of California,

12 Plaintiff,

13 v.

14 RCS SAFETY, LLC., DBA ROADWAY
CONSTRUCTION SERVICE, and DOES 1
15 through 50 inclusive,

16 Defendant.

Case No.: 23STCV18913

[Assigned for All Purposes to the Hon. William F.
Highberger, Dept. 10]

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT; JUDGMENT**

Date:
Time:
Dept: 10
Judge: Hon. William F. Highberger

Amended Complaint Filed: October 2, 2023
Complaint Filed: August 9, 2023
Trial Date: None set

[PROPOSED] ORDER AND JUDGMENT

This matter has come before the Honorable William F. Highberger in Department 10 of the Superior Court for the County of Los Angeles, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012 on Plaintiff Robert Arong's Motion for Final Approval of Class and PAGA Action Settlement, Class Representative Service Payment, and Administrative Costs, Attorneys' Fees and Costs ("Plaintiff's Motion for Final Approval") pursuant to California Rules of Court, Rule 3.769 and Labor Code sections 2698 *et seq.*

On February 28, 2025, the Court granted Plaintiff's Unopposed Motion for Preliminary Approval of Class and PAGA Action Settlement and entered an Order in accordance therewith.

Having duly considered all papers, evidence and oral arguments in this matter to date, including Plaintiff's Motion for Final Approval and good cause appearing, the Court ORDERS as follows:

1. This Order shall incorporate the parties' Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") and to the extent that the terms are defined in the Settlement Agreement, all defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement.

2. This Court has jurisdiction over the claims asserted in this litigation and personal jurisdiction over Plaintiff, Defendant, and the members of the Class, as defined in the Settlement Agreement.

3. The Court finds that the applicable requirements of the California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769 have been satisfied with respect to the Class and the settlement. The Court makes final its earlier provisional certification of the following Class for purposes of settlement only. As such, the "Class" shall include "All persons employed by Defendant in California and classified as a non-exempt employee who worked for Defendant from August 9, 2019, to December 1, 2024."

4. The term "Aggrieved Employee" shall refer to all persons employed by Defendant in California and classified as a non-exempt employee who worked for Defendant from August 9, 2022 to December 1, 2024.

5. The Court also confirms the following appointments: Plaintiff Kenneth Nesmith as Class

Representative; Graham Hollis, APC as Class Counsel; and Apex Class Action, LLC as the Administrator.

6. The Court finds that the Notice of Proposed Class Action Settlement that was approved on February 28, 2025 and transmitted to the Settlement Class fully and accurately informed the members of the Settlement Class of all material elements of the settlement, including their opportunity to request exclusion from the settlement or object to the settlement; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all members of the Settlement Class; and complied fully with the laws of the state of California, the United States Constitution, due process, rule 3.766 of the California Rules of Court, and all other applicable laws.

7. Based on the declaration of [INSERT] of Apex Class Action, LLC, the Court finds that [INSERT] Class Members submitted a valid request for exclusion.

8. Based on the declaration of [INSERT] of Apex Class Action, LLC, all papers filed in this Litigation, and oral argument, the Court finds that [INSERT] member[s] of the Settlement Class [has/have] objected to the terms of the Settlement.

9. In accordance with California law, the Court hereby GRANTS final approval of the settlement and finds it fair, reasonable and adequate, and in the best interest of the members of the Class as a whole. Specifically, the Court finds that the settlement was reached following meaningful discovery and investigation conducted by Class Counsel; that the settlement is the result of serious, informed, adversarial, and arm's-length negotiations between the parties and that the terms of the settlement are, in all respects, fair, adequate and reasonable. In so finding, the Court has considered all of the evidence presented, including evidence regarding the strength of Plaintiff's case; the risks, expense, and complexity of claims presented; the likely duration of further litigation; the amount offered in the settlement; the extent of investigation and discovery completed; and the experience and views of Class Counsel. The Court also considered the lack of objections from members of the Settlement Class. The Court ORDERS and directs that the settlement be effectuated in accordance with the Settlement Agreement and the following terms and conditions.

10. The Court finds that a full opportunity has been afforded to the members of the Class to participate in the hearing on Plaintiff's Motion for Final Approval, and all members of the Class and other persons wishing to be heard, have been heard. The members of the Class have had a full and fair

1 opportunity to exclude themselves from the settlement. Therefore, the Court ORDERS that pursuant to
2 the Settlement Agreement, and as of the date when Defendant deposits all amounts into a Qualified
3 Settlement Fund it is required to deposit pursuant the Settlement Agreement, Plaintiff and all Settlement
4 Class Members, on behalf of themselves and their respective former and present representatives, agents,
5 attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that
6 were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
7 Operative Complaint and ascertained in the course of the Action including, any and all claims failure to
8 provide meal periods, failure to provide rest periods, failure to provide recovery periods failure to pay
9 minimum and regular wages, failure to pay all overtime wages, failure to provide accurate itemized wage
10 statements, failure to timely pay all wages due upon separation of employment, failure to indemnify for
11 all necessary business expenses, civil penalties under the PAGA, relief under Business & Professions
12 Code (including Section 17200 et seq.), and claims for restitution and other equitable relief, liquidated
13 damages, or penalties; and any other benefit claimed on account of the allegations asserted in the Operative
14 Complaint. Except as set forth in Section 5.3, Participating Class Members do not release any other claims,
15 including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing
16 Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts
17 occurring outside the Class Period (collectively, the "Released Class Claims"). The Release only covers
18 claims from August 9, 2019, until December 1, 2024. The Release shall be fully binding on each and every
19 Participating Class Member.

20 11. In accordance with California Labor Code § 2699(l)(2), the Court has reviewed the
21 Settlement Agreement as it relates to the allocation of civil penalties under the Private Attorneys General
22 Act of 2004 (codified in Labor Code §§ 2698 et seq.) ("PAGA"). The Court finds that the allocation of
23 \$25,000 in civil penalties for claims under the Private Attorneys General Act of 2004 is fair, reasonable,
24 and finds that the Settlement is consistent with the Private Attorneys General Act of 2004. The Court
25 GRANTS approval the \$25,000 settlement of civil penalties for claims under the Private Attorneys
26 General Act of 2004.

27 12. The Court ORDERS that \$16,250 (65% of \$25,000) be paid to the California Labor and
28 Workforce Development Agency as required by the statute.

1 13. The Court ORDERS that \$8,750 (35% of \$25,000) be distributed to the Aggrieved
2 Employees, as defined by the Settlement Agreement, and in the manner set forth in the Settlement
3 Agreement.

4 14. Therefore, the Court ORDERS that pursuant to the Settlement Agreement, and as of the
5 date when Defendant deposits all amounts into a Qualified Settlement Fund it is required to deposit
6 pursuant the Settlement Agreement, Plaintiff and all Aggrieved Employees, are deemed to release, on
7 behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
8 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were
9 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
10 Complaint, and the PAGA Notice (collectively, the “Released PAGA Claims”). The Release only covers
11 claims from August 9, 2022, through the end of the Class Period. The Release shall be fully binding on
12 each and every Aggrieved Employee.

13 15. Defendant is ORDERED to fund the Gross Settlement Amount of \$1,100,000 by
14 transmitting the funds into a Qualified Settlement Fund (“QSF”), to be established by the Administrator.
15 Defendant shall fund the settlement with an initial payment of 50% within forty-five (45) days of after the
16 Court grants final approval of the Settlement. Thereafter, Defendant shall pay the remaining amount in
17 quarterly installments of 25% commencing once calendar quarter after the initial payment and the
18 remaining amount (25%) one calendar quarter thereafter.

19 16. The Administrator is ORDERED to distribute the settlement funds in accordance with the
20 Settlement Agreement.

21 17. The Court finds that the costs of the administration of the settlement are reasonable. The
22 Court awards Apex Class Action, LLC administration costs in the amount of \$8,500 for services
23 performed and the costs incurred in the administration of the settlement.

24 18. The Court finds that the requested Class Representative Service Payment of \$7,500 to
25 Plaintiff is fair and reasonable for the work performed and the risks associated with bringing this Action.
26 The Court awards and thus ORDERS that the Administrator issue a Class Representative Service Payment
27 to Plaintiff in the amount of \$7,500. The Class Representative Service Payment is in addition to Plaintiff’s
28

1 respective payment under the settlement. Any funds not awarded shall be allocated to the Net Settlement
2 Amount for distribution to members of the Settlement Class.

3 19. The Court finds that Class Counsel's request for attorneys' fees in the amount of \$366,630
4 falls within the range of reasonableness and the result achieved justifies the award sought. The Court
5 awards and therefore ORDERS that the Administrator issue attorneys' fees in the amount of \$366,630 to
6 GrahamHollis, APC.

7 20. The Court finds that Class Counsel's request for litigation costs incurred in the amount of
8 \$[INSERT] falls within the range of reasonableness and the result achieved justifies the award sought.
9 The Court awards and thus ORDERS that the Administrator issue payment for litigation costs incurred in
10 the amount of \$[INSERT] to GrahamHollis, APC.

11 21. An accounting summary regarding the distribution of the settlement funds and the status
12 of any resolved issues shall be filed by _____. A final accounting hearing regarding the
13 distribution of the settlement funds shall be held on _____ at _____ a.m./p.m. in
14 Department 10 of Los Angeles County Superior Court.

15
16 **IT IS SO ORDERED AND ADJUDGED.**

17
18 Dated: _____

Hon. William F. Highberger
Judge of the Superior Court