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ANDRES IBARRA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

**(UNLIMITED JURISDICTION)**

ANDRES IBARRA,

*Plaintiff,*

vs.

STADCO, a California corporation; BRETT  
MATTA, an individual; and DOES 1 to 25,  
inclusive,

*Defendants.*

Case No.: 23STCV26591

**DECLARATION OF MARALLE  
MESSRELIAN IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED MOTION FOR  
APPROVAL OF PAGA SETTLEMENT**

Action filed: October 30, 2023

Hearing Date: October 8, 2024

Hearing Time: 8:30 a.m.

Hearing Dept: 76, Hon. Christopher K.  
Lui

**Reservation Number: 528939987841**

**DECLARATION OF MARALLE MESSRELIAN IN SUPPORT OF  
PLAINTIFF’S UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT**

I, MARALLE MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of MM Law, APC and the attorney of record for Andres Ibarra (individually, “Ibarra” or “Plaintiff”) in his lawsuit against Defendants STADCO and Brett Matta (collectively “Defendants” or “STADCO”).

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. A true and correct copy of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq.*) Settlement Agreement (the “Settlement or “Agreement”) is attached hereto as **Exhibit 1**. A true and correct redline comparison of the PAGA Agreement to the Model LASC PAGA Agreement is attached hereto as **Exhibit 2**.

4. A true and correct copy of the parties agreed upon notice to the below-defined Aggrieved Employees (the “PAGA Notice”) is attached hereto as **Exhibit 3**.

***Factual and Procedural Background***

5. STADCO began to employ Plaintiff in or around November 1998 to work at its facility located at 107 S. Avenue 20 in Los Angeles, California. Plaintiff commenced his employment in a janitorial capacity, but eventually progressed to become a welding technician. Plaintiff continuously worked for Defendants for the next twenty-five years until his employment ended on June 15, 2023. Plaintiff’s last day worked for Defendant was on or about September 26, 2022.

6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On July 21, 2023, Plaintiff, on behalf of himself and STADCO’s other California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”) gave written notice by electronic service to the California Labor and Workforce Development Agency (“LWDA”) and via certified mail to Defendants of the specific provisions of the California

1 Labor Code alleged to have been violated, including the facts and theories to support the alleged  
2 violations. The specific provisions alleged to have been violated in the PAGA notice letter  
3 included Labor Code sections 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1,  
4 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, and 2804, and Industrial Welfare Commission  
5 Wage Order No. 1, sections 2(E), 7, 11- and 12. A true and correct copy of Plaintiff's letter to  
6 the LWDA is attached hereto as **Exhibit 4**.

7         7.       On October 30, 2023, Plaintiff filed a lawsuit in Los Angeles County Superior  
8 Court (the "Lawsuit") against Defendants. The Lawsuit alleged the following relevant causes of  
9 action against Defendants: (1) failure to pay all wages earned for all hours worked [*Lab. Code*,  
10 §§ 510, 1194, 1197, and 1198]; (2) failure to provide rest breaks [*Lab. Code*, §§ 226.7, 1198];  
11 (3) failure to provide meal periods [*Lab. Code*, §§ 226.7, 512, 1198]; (4) failure to indemnify  
12 [*Lab. Code*, § 2802]; (5) failure to provide accurate, itemized wage statements [*Lab. Code*, §  
13 226]; (6) failure to pay wages when employment ends [*Lab. Code*, §§ 201, 202, 203]; (7) failure  
14 to pay wages owed every pay period [*Lab. Code*, § 204]; (8) imposition of civil penalties  
15 pursuant to California Private Attorneys General Act ("PAGA") [*Lab. Code*, §§ 2698, *et seq.*];  
16 and (17) unfair competition [*Bus. & Prof. Code*, §§ 17200, *et seq.*]. A true and correct copy of  
17 Plaintiff's Complaint is attached hereto as **Exhibit 5**. On January 18, 2024 Defendant filed its  
18 Answer to Plaintiff's Complaint. A true and correct copy of Defendant's Answer is attached  
19 hereto as **Exhibit 6**.

20         8.       Upon mutual agreement of the parties, on June 26, 2024, the parties participated  
21 in a full-day mediation session with professional neutral Todd A. Smith.

22         9.       At the mediation, the parties agreed to settle the Action. Before agreeing to the  
23 terms of the Settlement, the Parties engaged in informal discovery regarding STADCO's  
24 policies, practices, operations, time and payroll information and other topics. In advance of  
25 mediation, Defendant produced Plaintiff's personnel file, timekeeping records and earnings  
26 statements. Moreover, prior to the mediation, Defendant provided Plaintiff's counsel with  
27 information and documents relating to other Aggrieved Employees, including timekeeping and  
28 payroll data. Through extensive, arm's length negotiations at the mediation, and only after

1 discovery and investigation were performed, the parties agreed to settlement terms. Now that  
2 the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval.

3 10. Defendant denies any liability or wrongdoing of any kind whatsoever associated  
4 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and  
5 discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

6 11. Counsel for the Parties have further investigated the applicable law as applied to  
7 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code  
8 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the  
9 Defendants are experienced in defending PAGA cases. Based on the parties' own independent  
10 investigations and evaluations, the parties and their respective counsel are of the opinion that the  
11 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable  
12 and adequate and are in the best interests of Plaintiff, the PAGA Employees, the State, and  
13 Defendant in light of all known facts and circumstances and the risks inherent in litigation,  
14 especially in this post pandemic era, where businesses are struggling to remain afloat, much less  
15 prosper and make a large profit.

16 12. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).  
17 The Court necessarily has broad discretion in making the decision to approve or reject a  
18 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,  
19 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount  
20 of penalties based on the facts and circumstances of the particular case. Although the PAGA  
21 does not set forth the particular standards against which a PAGA settlement should be evaluated,  
22 the LWDA has provided guidance for approval that mirrors the standards for evaluating class  
23 action settlements.

24 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are  
25 met here. First, any civil penalties recovered, whether by judgment or settlement, must be  
26 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved  
27 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.  
28 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must

1 be given notice of the settlement so that it may be heard before the Court decides whether to  
2 grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA  
3 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with  
4 the LWDA and a confirmation email is attached as **Exhibit 9**. As a result, Plaintiff has met all  
5 procedural statutory requirements for settling a PAGA action.

6 ***Background of Counsel***

7 14. In 2003, I earned a Bachelor of the Science degree with a major in Accounting  
8 from Cal State University, Northridge. In 2017, I earned a Juris Doctor degree from  
9 Southwestern University School of Law.

10 15. In December of 2017, the Supreme Court for the State of California admitted me  
11 as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this  
12 State.

13 16. I am experienced in handling employment law matters and specifically wage and  
14 hour cases. I have been practicing law since 2017. My experience has been almost exclusively  
15 in the area of employment law representing employees with claims of wrongful termination,  
16 harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical  
17 leave violations. I am a member of the California Employment Lawyers Association (CELA).

18 17. In my representation of employees, I have prosecuted several lawsuits on behalf  
19 of employees with claims of rest and meal period and overtime violations or other wage claims.

20 18. I have been involved in the prosecution of numerous wage and hour class and  
21 representative actions at various stages of litigation. A small sampling of the wage and hour  
22 class and representative action cases in which I have been counsel of record is as follows:

23 a) *Joshua Silva v. Payo Laboratories, Inc., et al.*, San Luis Obispo County  
24 Superior Court, Case No. 19CV-0689 (appointed Class Counsel and granted final approval of  
25 class action settlement by the court).

26 b) *Mervin Perkins v. CC Venice, LLC, et al.*, Los Angeles Superior Court, Case  
27 No. BC703660 (appointed Class Counsel and granted final approval of class action settlement  
28 by the court).

1 c) *Jashar Bryant v. Pinnacle Cabling & Construction, Inc., et al.*, Orange  
2 County Superior Court, Case No. 30-2020-01123094-CU-OE-CXC (appointed Class Counsel  
3 and granted final approval of class action settlement by the court).

4 d) *Collins v. Spa Products Import & Distribution Co., LLC*, et al., Los Angeles  
5 County Superior Court, Case No. 19STCV10586 (granted final approval of class action  
6 settlement by the court)

7 e) *Sabrina Slater v. Avalon Care Center – Sonora, L.L.C., et al.*, Tuolumne  
8 County Superior Court, Case No. CV62006 (granted final approval of class action settlement by  
9 the court)

10 f) *Violet Avalos v. Smithcare Incorporated, et al.*, Tulare County Superior  
11 Court, Case No. VCU272975 (granted final approval of class action settlement by the court)

12 g) *David Contreras v. HTX Services LLC, et al.*, Los Angeles County Superior  
13 Court, Case No. 19STCV43405 (granted final approval of class action settlement by the court)

14 h) *Devin Cherry v. LA Corral Three, Inc., et al.*, Kern County Superior Court,  
15 Case No., BCV-18-101817-DRL (granted final approval of class action settlement by the court)

16 i) *Vikki Curl and Anthony J. Gratton v. Reel Security Corp., et al.*, Los Angeles  
17 County Superior Court, Case No. 18STCV09302 (granted final approval of class action  
18 settlement by the court)

19 j) *Corrine Lashbrook and Joshua Sweat v. Andy's BP, Inc., et al.*, San Mateo  
20 County Superior Court, Case No. 19CIV02344 (granted final approval of class action settlement  
21 by the court)

22 k) *Stephen Aguirre and Christopher Walls v. Anlin Industries*, Fresno County  
23 Superior Court, Case No. 17CECG04326 (order and judgment approving PAGA settlement by  
24 the court)

25 l) *Rebecca Mallory v. Odyssey Healthcare Operating A, L.P.*, Kern County  
26 Superior Court, Case No. BCV-19-102735 (order and judgment approving PAGA settlement by  
27 the court)

28 m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al.*, Fresno

1 County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA  
2 settlement by the court)

3 n) *Kevin Littleton v. Lincoln Military Property Management LP., San Diego*  
4 County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment  
5 approving PAGA settlement by the court)

6 o) *Krystal Thomas v. Choice Physicians Network, Inc., et al., San Bernardino*  
7 County Superior Court, Case No. CIVDS2013964 (order and judgment approving PAGA  
8 settlement by the court)

9 p) *Otina Sengvong v. Probuild Company, LLC, et al., United States District*  
10 Court, Southern District of California, Case No. 3:19-cv-02231-MMA (JLB) (granted final  
11 approval of class action settlement by the court)

12 q) *Orland Perez Avalos v. Milagros Restaurant LLC, et al., San Mateo County*  
13 Superior Court, Case No. 22-CIV-01222 (order and judgment approving PAGA settlement by  
14 the court)

15 r) *David Xiqui Vasquez v. The Province LLC, et al., Santa Clara County*  
16 Superior Court, Case No. 22CV397541 (order and judgment approving PAGA settlement by  
17 the court)

18 s) *Manuel Melendrez v. Clean Auto Inc., et al., San Mateo County Superior*  
19 Court, Case No. 22CIV01967 (order and judgment approving PAGA settlement by the court)

20 t) *Arturo Vera Lopez v. Green Valley Landscape, et al., Monterey County*  
21 Superior Court, Case No. 22CV003751 (order and judgment approving PAGA settlement by  
22 the court)

23 u) *Erasmus Gomez v. A-I Jay's Machining, Inc., et al., Santa Clara County*  
24 Superior Court, Case No. 22CV394795 (order and judgment approving PAGA settlement by  
25 the court)

26 v) *Iris Rodriguez v. Facility Masters, Inc., Santa Clara County Superior Court,*  
27 Case No. 23CV423999 (order and judgment approving PAGA settlement by the court)

28 w) *Mariana Ruelas v. Vista La Mesa Senior Living, Inc., et al., San Diego*

1 Superior Court, Case No. 37-2023-00050755-CU-OE-CTL (order and judgment approving  
2 PAGA settlement by the court).

3 x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al.*, Santa Clara Superior  
4 Court, Case No. 23CV422622 ( order and judgment approving PAGA settlement by the court).

5 y) *Irma Tapia v. Posada Associates, et al.*, Santa Cruz Superior Court, Case No.  
6 23CV00355 (order and judgment approving PAGA settlement by the court).

7 ***Exposure and Risk Analysis***

8 19. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)  
9 The parties reached the Settlement through arm's-length bargaining with the aid of a respected  
10 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and  
11 the Court to act intelligently. Plaintiff requested and Defendant provided the number PAGA  
12 Employees, the number of total pay periods during the PAGA Period, all policies in effect during  
13 the PAGA Period, and anonymized payroll and time punch data for all of its California non-  
14 exempt employees for the relevant period; and (3) Counsel for the Parties are experienced with  
15 PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent  
16 PAGA Employees and there are no issues of ascertainability.

17 20. I considered various sources of information in the lead-up to the mediation of  
18 June 26, 2024 that enabled Plaintiff to achieve the Settlement at issue. Among other things,  
19 Plaintiff considered the following:

- 20 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 21 • Plaintiff's counsel requested that Defendant provide any and all policies regarding  
22 overtime and double-time wages, off the clock work, expense reimbursement, meal  
23 periods, rest breaks, meal period waivers and agreements, compensation plans, and  
24 complaints about working conditions in effect during the relevant time period beginning  
25 in July of 2022. Defendant produced those policies as part of their employee handbook.
- 26 • Plaintiff's counsel requested that Defendant provide the total number of employees,  
27 paychecks, and the pay cycles during the relevant period. Defendant provided the  
28 answers to each of these questions.
- Defendant provided Plaintiff's counsel with anonymized payroll and time punch data for  
all of its California non-exempt employees covering the period covering the period July

21, 2022, through April 30, 2024.

- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.
- Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for "off the clock" work and business expense reimbursement, especially as it relates to "manageability" arguments brought up by the defense.

21. Defendant estimated for purposes of mediation that, through April 30, 2024, there were approximately 92 Aggrieved Employees who incurred 5,127 pay periods during the relevant period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period.

22. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of approximately 437,250 for civil penalties for Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant strongly disputes, revealed a 57.9% violation rate for either late, short, or no meal periods for shifts over 5 hours. Since the total number of pay periods in the PAGA period through April 30, 2024, was 5,127 and since approximately 98.2% of the shifts in the data analysis were over 5 hours, the total number of pay periods to consider for potential meal break violations was 5,035 (98.2% x 5,127 pay periods). As such, with the 57.9% violation rate, the maximum exposure would be \$145,750, which is calculated as \$50 penalty multiplied by 2,915 pay periods (57.9% of the 5,035 pay periods). Plaintiff extrapolated the same 57.9% rate for rest break violations, which would equate to a maximum exposure of \$291,500 (\$100 penalty per pay period multiplied by 2,915 pay periods, which is 57.9% x 5,035 pay periods). As such, the aggregate maximum exposure for meal break and rest break claims would be \$437,250. Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure

1 presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or  
2 confiscatory. For the rest period violations, it also presumes that the meal and rest period  
3 violation rates were identical

4 23. There are risks to Plaintiff's meal and rest period claims. Defendant contends  
5 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a  
6 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.  
7 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free  
8 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is  
9 performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,  
10 or prohibited the employee from taking a proper break, or otherwise failed to release the  
11 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the  
12 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*  
13 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendant's time  
14 records the exact reasons why a meal period appears to be short or late would be difficult and  
15 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal  
16 periods will be a challenge. Additionally, Defendants provided evidence at mediation that upon  
17 receiving Plaintiff's July 21, 2023 LWDA Notice, they stopped auto-deducting the employees'  
18 meal breaks on July 31, 2023. Moreover, STADCO's Employee Handbook contains legally  
19 compliant meal period and rest break policies.

20 24. Defendant contends it provided its non-exempt employees with the opportunity  
21 to take rest breaks in accordance with California law, and, accordingly, that Plaintiff's rest break  
22 claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.  
23 Employers are not required to record rest periods and such periods are paid. Unlike meal periods,  
24 where there are often records showing whether an employee clocked out or not, there is no such  
25 evidence to prove a missed rest period or that the employer refused to authorize and permit one.

26 25. There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges  
27 that Defendant did not reimburse him or the other Aggrieved Employees for their tools and  
28 mobile phone expenses. Defendant provided evidence at mediation that they provided all of the

1 employees with the necessary tools to perform their job and employees chose to bring and use  
2 their own tools. Moreover, there is a risk that the Court may consider Plaintiff's claims as to  
3 Defendant's alleged failure to indemnify for business expenses to be individual in nature. As  
4 such, I had to significantly discount the value of this claim during settlement negotiations.

5         26. Moreover, I am unaware of any California State court decision awarding a  
6 plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same  
7 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that  
8 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.  
9 Plaintiff's counsel had to substantially discount the value of these claims in the settlement  
10 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one  
11 penalty for each pay period (regardless of the different Labor Code violations that potentially  
12 occurred for the same employee, during the same pay periods).

13         27. Additionally, PAGA states a court has discretion to award a lesser amount than  
14 the maximum penalty. *See Lab. Code*, § 2699, subd. (e)(2) ("...a court may award a lesser amount  
15 than the maximum civil penalty amount specified by this part if, based on the facts and  
16 circumstances of the particular case, to do otherwise would result in an award that is unjust,  
17 arbitrary and oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management,*  
18 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that  
19 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's  
20 evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504  
21 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily  
22 discounted award of only \$5 per violation because it was within the Court's discretion to  
23 significantly reduce PAGA penalties even when there is a finding that a violation of the  
24 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of  
25 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the  
26 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated  
27 that this reduction was warranted because imposing the maximum penalty would be "unjust,  
28 arbitrary, and oppressive", based on Starbucks's "good faith attempts" to comply with meal break

1 obligations and because the Court found the violations were minimal. Applying the same formula  
2 here and assuming there was one violation during each pay period, the award of civil penalties  
3 could not exceed \$25,635 in PAGA penalties (5,127 violations x \$5). As such, this Settlement is  
4 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.  
5 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff's  
6 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement  
7 Amount is uncertain.

8         28. The Parties further recognize that the issues presented in the representative PAGA  
9 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and  
10 that further litigation will cause inconvenience, distraction, disruption, delay, and expense  
11 disproportionate to the maximum potential benefits to the PAGA Employees and Plaintiff from  
12 continued litigation, especially in the post pandemic era where further and extensive litigation  
13 may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,  
14 Plaintiff's attorneys, other PAGA Employees, and the State of California.

15         29. The settlement of the representative PAGA claim involves monetary relief to all  
16 PAGA Employees, Plaintiff, his attorneys, and the State of California. The Settlement is  
17 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure  
18 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a  
19 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound  
20 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees  
21 concerned. Furthermore, any employees who are dissatisfied with the amount they received in  
22 civil penalties can pursue any damages they believe they are owed by the Defendants. The  
23 Settlement does not require them to opt out to do so.

24         30. Furthermore, Plaintiff recognizes that continued litigation presents significant  
25 risks that support a significant downward departure from Plaintiff's estimated civil penalties  
26 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable  
27 compromise amount for these claims and is in the best interest of Plaintiff and PAGA Employees  
28 and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir.

June 3, 2014) 2014 WL 2465049, \* 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arms-length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law.

31. As such, the settlement of PAGA penalties in the gross sum of \$205,000.00, of which 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs (\$92,945.82) will be paid to the LWDA and 25% (\$30,981.94) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

#### ***Individual PAGA Payments***

32. Defendants represent that at the time of mediation there were approximately 92 Aggrieved Employees during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees Payment (\$68,333.33) and PAGA Counsel's Litigation Expenses Payment (\$9,355.43), and the Administration Costs (\$3,383.48), the Net Settlement Amount will be approximately \$123,927.76 allocated as PAGA Penalties. Seventy five percent (75%) of the PAGA Penalties will be paid to the Labor and Workforce Development Agency ("LWDA") (\$92,945.82), and twenty five percent (25%) (\$30,981.94) of the PAGA Penalties will be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Agreement, ¶ 3.2. With a total of 92 Aggrieved Employees, the average estimated Individual PAGA Payment for each Aggrieved Employee is approximately \$336.76 (25% of the estimated PAGA Penalties of \$30,981.94 / 92 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails.

#### ***Plaintiff's Individual Settlement***

33. Plaintiff negotiated an individual settlement agreement separate from the PAGA Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual settlement agreement was to settle his individual wage and hour claims, disability discrimination, retaliation, and wrongful termination claims.

34. As part of this confidential agreement, Plaintiff also provided Defendants with a

1 general release of all claims, whether known or unknown, including unknown claims covered  
2 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved  
3 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained  
4 contact with my office and helped me gather information and evidence to prove the alleged  
5 claims and has agreed to remain involved as a PAGA representative even if the Court does not  
6 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has  
7 no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement  
8 to the Court *in camera* for review if the Court requests. It represents a fair resolution for  
9 Plaintiff's individual wage and hour claims and claims for disability discrimination/retaliation  
10 and wrongful termination. *See generally* Declaration of Andres Ibarra.

11 35. The PAGA statute does not forbid service awards. Courts frequently award them  
12 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),  
13 2018 WL 4489590, at \*2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-  
14 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013  
15 WL 12415482, at \*2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-  
16 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking  
17 with our office on many occasions by phone, explaining what his employment at STADCO was  
18 like, explaining what his employment at STADCO had in common with other employees who  
19 worked for STADCO, explaining his claims to me and my staff, participating in mediation, and  
20 communicating with me and my staff about the settlement agreement and related documents.  
21 Despite this, Plaintiff is **not** asking for a service award for his involvement and the time he spent  
22 assisting my firm with the PAGA action. *See generally* Declaration of Andres Ibarra.

### 23 *Attorneys' Fees and Costs*

24 36. I represent Plaintiff on a straight contingency basis. My firm's request for  
25 \$68,333.33 in attorney fees and \$9,355.43 in litigation costs is fair and reasonable. "[R]egardless  
26 whether the percentage method or the lodestar method is used, fee awards in class actions average  
27 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,  
28 fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*")

1 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129  
2 F.3d 1026, 1027 (“MGM”) (awarding 33% of total fund amount).) This is also consistent with my  
3 experience in wage and hour class and PAGA settlements.

4 37. To date, I have investigated and prosecuted this matter vigorously, including  
5 drafting the initial PAGA notice and Complaint; drafting informal discovery questions, reviewing  
6 Defendants’ informal document production, including wage and hour policies; sending and  
7 receiving emails on the case with defense counsel, including substantive discussions; sending the  
8 PAGA data to Plaintiff’s expert for review/analysis and reviewing the expert’s  
9 findings/conclusions; drafting a comprehensive mediation brief and engaging in a private  
10 mediation; and drafting this PAGA approval motion. I also expect to perform additional work on  
11 this case if the Court grants final approval of the Settlement, including supervision of the  
12 Administrator’s disbursement of the settlement funds to the Aggrieved Employees.

13 38. My previous experience in litigating wage and hour actions also supports the  
14 reasonableness of the fee request. Based on past experience with similar matter, I was able to  
15 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.  
16 Because it is reasonable to compensate me commensurate with my skill, reputation, and  
17 experience, attorney’s fees of approximately one-third of the Gross Settlement Amount is  
18 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment  
19 litigation, Daniel Parker Jett of Freeman, Mathis & Gary LLP, also supports the fairness and  
20 reasonableness of the requested fee award. The award of attorneys’ fees sought is justified here  
21 by the contingency nature of the attorney-client relationship, the risks of non-payment and non-  
22 reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff’s  
23 Counsel has achieved for the Aggrieved Employees while bearing the substantial burdens of  
24 contingency representation.

25 39. In addition, my firm incurred substantial costs, \$9,355.43 to date, which consist of  
26 mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct  
27 summary of my firm’s costs and expenses incurred to date is attached as **Exhibit 7** to this  
28 declaration. I will make detailed copies of such records available to the Court for *in camera*

1 inspection upon its request. As the evidence submitted herewith shows, all of these costs are  
2 documented and reasonably incurred. Accordingly, they warrant the Court's approval.

3 ***Settlement Administration Costs***

4 40. With regard to the settlement administration costs provision, it is reasonable.  
5 Before agreeing to Phoenix Class Action Administration Solutions ("Phoenix"), the parties  
6 sought and reviewed bids from other reputable third-party administrator and Phoenix's bid was  
7 comparable. A true and correct copy of the bid from Phoenix Class Action Administration  
8 Solutions is attached hereto as **Exhibit 8**. Furthermore, the Declaration of Michael Moore with  
9 attached exhibits, filed under separate cover, sets forth Phoenix's qualifications and costs to  
10 administer the settlement. *See generally* Declaration of Michael Moore. Thus, the settlement  
11 administration costs provision should be given approval.

12 ***Notice of Settlement to the LWDA***

13 41. Pursuant to Lab. Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement  
14 with the LWDA at the same time the Settlement is being filed with the Court. True and correct  
15 copies of Plaintiff's submission with the LWDA and the confirmation email are collectively  
16 attached as **Exhibit 9** to this declaration.

17 I declare under the penalty of perjury of the laws of the State of California that the  
18 foregoing is true and correct to the best of my knowledge.

19 Executed on September 16, 2024 , at Glendale, California.

20  
21 

22 MARALLE MESSRELIAN,  
23 Declarant  
24  
25  
26  
27  
28

# **EXHIBIT 1**

**PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)  
SETTLEMENT AND RELEASE AGREEMENT**

*Andres Ibarra v. STADCO, et al.*  
*Los Angeles County Superior Court, Case No. 23STCV26591*

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff ANDRES IBARRA (“Plaintiff”) and Defendant STADCO (“STADCO”). The Agreement refers to Plaintiff and STADCO collectively as “Parties,” or individually as “Party.”

**1. DEFINITIONS**

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendants STADCO and Bret Matta captioned *Andres Ibarra v. STADCO, et al.*, case no. 23STCV26591, initiated on October 30, 2023 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means a person employed by STADCO in California and classified as a non-exempt hourly paid employee who worked for STADCO for one or more pay periods during the PAGA Period.
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in STADCO’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Daniel Parker Jett and Elizabeth M. Potts of FREEMAN MATHIS & GARY, LLP.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the

Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

- 1.10. "Gross Settlement Amount" means Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00) which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.17. "PAGA Counsel" means Maralle Messrelan of MM LAW APC, the attorneys representing the Plaintiff in the Action.
- 1.18. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.19. "PAGA Notice" means Plaintiff's July 21, 2023 letter to STADCO and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.20. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for STADCO for at least one day during the PAGA Period.
- 1.21. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

- 1.22. “PAGA Period” means the period from July 21, 2022, through the date of entry of the Order approving the PAGA settlement agreement (the “PAGA Period”), unless a shorter date is set pursuant to paragraph 5 below.
- 1.23. “Plaintiff” means Andres Ibarra, the named plaintiff in the Action.
- 1.24. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. “Released Parties” means: Defendants STADCO and Bret Matta, and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, employees, parent and subsidiary companies, affiliates, holding companies, joint ventures, insurers and re-insurers, present and former spouses and heirs.
- 1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

## **2. RECITALS**

- 2.1. On October 30, 2023, Plaintiff filed a Complaint alleging causes of action against Defendants for (1) failure to pay all wages earned for all hours worked [*Lab. Code*, §§ 510, 1194, 1197, and 1198]; (2) failure to provide rest breaks [*Lab. Code*, §§ 226.7, 1198]; (3) failure to provide meal periods [*Lab. Code*, §§ 226.7, 512, 1198]; (4) failure to indemnify [*Lab. Code*, § 2802]; (5) failure to provide accurate itemized wage statements [*Lab. Code*, § 226]; (6) failure to pay wages when employment ends [*Lab. Code*, §§ 201, 202, 203]; (7) failure to pay wages owed every pay period [*Lab. Code*, § 204]; (8) imposition of civil penalties pursuant to California Private Attorneys General Act (“PAGA”) [*Lab. Code*, §§ 2698, *et seq.*]; (9) age discrimination in violation of the Fair Employment and Housing Act (“FEHA”) [*Gov. Code*, § 12940(a)]; (10) disability discrimination [*Gov. Code*, §§ 12940(a); 12926(m)]; (11) failure to engage in the interactive process [*Gov. Code*, § 12940(n)]; (12) failure to accommodate disability [*Gov. Code*, § 12940(m)]; (13) retaliation in violation of the FEHA [*Gov. Code*, § 12940(h)]; (14) failure to prevent discrimination in violation of the FEHA [*Gov. Code*, §§ 12940(k)]; (15) wrongful termination in violation of the FEHA [*Gov. Code*, § 12940(a)]; (16) wrongful termination in violation of public policy; and (17) unfair competition [*Bus. & Prof. Code*, §§ 17200, *et seq.*]. The Complaint is the operative complaint in the Action (the “Operative Complaint.”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

- 2.3. On June 26, 2024, the Parties participated in an all-day mediation presided over by Todd A. Smith, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, anonymized time and payroll data for all Aggrieved Employees for the PAGA Period July 21, 2022, through April 15, 2024.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### 3. **MONETARY TERMS**

- 3.1. **Gross Settlement Amount:** Except as otherwise provided by Paragraph 8 below, STADCO promises to pay Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00) and no more as the Gross Settlement Amount. STADCO has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to STADCO.
- 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 the Administrator:** An Administrator Expenses Payment not to exceed \$4,000.00 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 \$4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
  - 3.2.2. **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 33% which is currently estimated to be \$68,333.33 and PAGA Counsel Litigation Expenses Payment of not more than \$10,000.00. STADCO will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and

holds STADCO harmless, and indemnifies STADCO, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$122,666.67 to be paid from the Gross Settlement Amount, with 75% (\$92,000.00) allocated to the LWDA PAGA Payment and 25% (\$30,666.67) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$30,666.67) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

#### **4. SETTLEMENT FUNDING AND PAYMENTS**

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, STADCO estimates there are 92 Aggrieved Employees who worked a total of 5,127 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 30 days of the Effective Date, STADCO will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. STADCO has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which STADCO must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

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

4.4. Payments from the Gross Settlement Amount. Within 15 days after STADCO funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA

Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

- 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Together with the Individual PAGA Payments, the Settlement Administrator will issue each Aggrieved Employee an explanatory letter in the form attached as **Exhibit A**.
  - 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
  - 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
  - 4.4.4. The payment of Individual PAGA Payments shall not obligate STADCO to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
5. **RELEASE OF CLAIMS.** Effective on the date when STADCO fully funds the entire Gross Settlement Amount Plaintiff and PAGA 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 (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("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 PAGA 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 Aggrieved Employees. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties 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, including California Labor Code sections 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, 2804, and IWC Wage Order 1, §§ 2(E), 7, 11-12.

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

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

- 6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement

(Labor Code section 2699, subd. (1)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA 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. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

6.4 Notice to LWDA. Pursuant to California Labor Code § 2699(1)(1), Plaintiff shall submit to the LWDA a copy of this Settlement Agreement and all supporting approval documents at the same time that Plaintiff submits it to the Court for approval.

## **7. SETTLEMENT ADMINISTRATION.**

7.1. Selection of Administrator. The Parties have jointly selected Phoenix Class Action Settlement Administration Solutions, to serve as the Settlement Administrator and verified that, as a condition of appointment, Phoenix Class Action Settlement Administration Solutions 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, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

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

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATE AND ESCALATOR CLAUSE.** Based on its records, STADCO estimates that there are 92 Aggrieved Employees who incurred a projected cumulative total of 5,127 pay periods during the PAGA Period through payroll of June 27, 2024. Should the number of pay periods during the PAGA Period increase by more than 10%, STADCO will have the option to either (a) increase the Gross Settlement Amount by the percentage in excess of 10% above 5,127, or (b) shorten the release period to alleviate any increase in the Gross Settlement Amount. For example, if the final number of pay periods of the Aggrieved Employees is 11% higher than 5,127 as estimated hereinabove, the gross settlement amount would be increased by one percent (1%). In the alternative, if the increase in the Gross Settlement Amount attributable to excess pay periods is not financially feasible for STADCO, STADCO may select a date prior to entry of the Approval Order as the termination date for the PAGA Period in order to lessen the escalator payment obligation component of the Gross Settlement Amount.

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

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

## **10. ADDITIONAL PROVISIONS.**

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

bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

- 10.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by STADCO in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from STADCO unless, prior to the Administrator's payment of all Settlement Funds, STADCO makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

MM Law, APC  
500 N. Brand Blvd., Suite 2000  
Glendale, CA 91203

To Defendants:

FREEMAN MATHIS & GARY, LLP  
Attn: Daniel Parker Jett and Elizabeth M. Potts  
550 South Hope Street, Suite 2200  
Los Angeles, CA 90071-2631

- 10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of

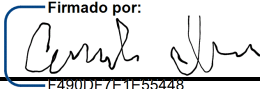
them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

9/12/2024

DATE

**PLAINTIFF**

Firmado por:  


ANDRES IBARRA

**STADCO**

DATE

Bret Matta, President

**APPROVED AS TO FORM**

**MM LAW APC**

9/12/2024

DATE

DocuSigned by:  


Maralle Messrelian  
Attorneys for Plaintiff, Andres Ibarra

**FREEMAN MATHIS & GARY, LLP**

DATE

Daniel Parker Jett  
Elizabeth M. Potts  
Attorneys for Defendants STADCO and Bret  
Matta

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**PLAINTIFF**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ANDRES IBARRA

09/13/2024  
\_\_\_\_\_  
DATE

STADCO  
  
\_\_\_\_\_  
Bret Matta, President

**APPROVED AS TO FORM**

**MM LAW APC**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Maralle Messrelian  
Attorneys for Plaintiff, Andres Ibarra

**FREEMAN MATHIS & GARY, LLP**

September 13, 2024  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
Daniel Parker Jett  
Elizabeth M. Potts  
Attorneys for Defendants STADCO and Bret  
Matta

# **EXHIBIT A**

## NOTICE OF PAGA SETTLEMENT

*Andres Ibarra v. STADCO, et al.*  
*Los Angeles County Superior Court, Case No. 23STCV26591*

<<Settlement Administrator >>

[ ]

[ ]

Telephone: [ ]

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act (“PAGA”) [Cal. Lab. Code, §§ 2698, *et seq.*] (“the Action”). The plaintiff in the Action is Andres Ibarra (“Plaintiff”) and the defendants are STADCO and Bret Matta (collectively, “Defendants”). The Action seeks to impose civil penalties for purported violations of the California Labor Code on behalf of all persons within the State of California who are or were employed by STADCO in the State of California and classified as non-exempt during the PAGA Period of July 21, 2022, through the date of entry of the Order approving the PAGA settlement agreement (the “Aggrieved Employees”). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants and their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys. The released PAGA claims shall include all known or unknown claims for civil penalties, attorneys’ fees and costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly plead in the operative Complaint and all other Labor Code claims that could have been asserted based on the facts and allegations plead in the operative Complaint, including but not limited to: California Labor Code Sections §§ 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, 2804, and IWC Wage Order 1, §§ 2(E), 7, 11-12.

By Order dated <<court approval order date>>, the Superior Court of the State of California, Los Angeles County approved the Settlement of the PAGA claims.

According to the STADCO's records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee .

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties, which may be subject to local, state, or federal taxes, and will be reported to the IRS and state tax authorities via Form 1099. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Phoenix Class Action Settlement Administration Solutions (the Settlement Administrator) using the contact information at the top of this correspondence.

# **EXHIBIT 2**

~~[MODEL] PAGA~~ PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698  
ET SEQ.)

SETTLEMENT ~~AGREEMENT~~ AND RELEASE AGREEMENT

Andres Ibarra v. STADCO, et al.  
Los Angeles County Superior Court, Case No. 23STCV26591

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

~~\_\_\_\_\_~~ Plaintiff ANDRES IBARRA (“Plaintiff”) and ~~defendant XYZ~~ \_\_\_\_\_  
(“XYZ”). ~~Defendant STADCO~~ (“STADCO”). The Agreement refers to Plaintiff and  
~~XYZSTADCO~~ collectively as “Parties,” or individually as “Party.”

1. ~~1.~~ DEFINITIONS:

~~1.1.~~ “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against  
XYZ Defendants STADCO and Bret Matta captioned — Andres Ibarra v. STADCO, et  
al., case no. 23STCV26591, initiated on \_\_\_\_\_

1.1. October 30, 2023 and pending in Superior Court of the State of California, County of  
Los Angeles.

~~1.2.~~ “Administrator” means \_\_\_\_\_ Phoenix Class Action Administration Solutions, the neutral  
entity the Parties have

1.2. agreed to appoint to administer the Settlement.

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

~~1.4.~~ “Aggrieved Employee” means ~~[e.g.,~~ a person employed by XYZSTADCO in California  
and

1.4. classified as a \_\_\_\_\_ non-exempt hourly paid employee who worked for XYZSTADCO  
for one or more pay periods during the PAGA Period~~].~~

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

~~1.6.~~ 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and  
search for current Aggrieved Employee mailing addresses using all reasonably available  
sources, methods and means including, but not limited to, the National Change of  
Address database, skip traces, and direct contact by the Administrator with Aggrieved  
Employees.

~~1.7.~~ 1.7. “Court” means the Superior Court of California, County of Los Angeles.

~~1.8.~~ ~~1.8.~~ “Defense Counsel” means—— Daniel Parker Jett and Elizabeth M. Potts of FREEMAN MATHIS & GARY, LLP.

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

~~1.10.~~—— “Gross Settlement Amount” means \$ Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00) which is the total amount ~~XYZ agrees~~ Defendants agree to pay under the Settlement except as provided in Paragraph 98 below. The

1.10. Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

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

~~1.12.~~ "Judgment" means the judgment entered by the Court based upon the Final 1.12. Approval.

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

~~1.14.~~ "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the 1.14. LWDA under Labor Code section 2699, subd. (i).

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

1.16. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

~~1.16.~~ "PAGA Counsel" means \_\_\_\_\_ Maralle Messrelian of  
MM LAW APC, the attorneys  
1.17. representing the Plaintiff in the Action.

~~1.17.~~ "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses  
1.18. Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

~~1.18.~~ "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for XYZ for at least one day during the PAGA Period.

~~1.19.~~ "PAGA Period" means the period from \_\_\_\_\_ to \_\_\_\_\_.

~~1.1.~~ ~~1.20.~~ ~~"PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).~~

~~1.21.~~ "PAGA Notice" means Plaintiff's July 21, 2023 letter to XYZSTADCO and the LWDA

1.19. ~~[and Plaintiff's letter to XYZ and the LWDA]~~ providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.20. ~~1.22.~~ "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for STADCO for at least one day during the PAGA Period.

“PAGA Penalties” means the total amount of PAGA civil penalties to be paid  
from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees  
1.21. ~~(\$ —)~~ and the 75% to LWDA ~~(\$ —)~~ in settlement of PAGA claims.

~~1.22. 1.23.~~ “PAGA Period” means the period from July 21, 2022, through the date of entry of the Order approving the PAGA settlement agreement (the “PAGA Period”), unless a shorter date is set pursuant to paragraph 5 below.

“Plaintiff” means \_\_\_\_\_ Andres Ibarra, the named plaintiff in the ~~1.23.~~ Action.

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

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

~~1.26. 1.26.~~ “Released Parties” means: XYZ Defendants STADCO and Bret Matta, and each of ~~its~~their former and present directors, officers, shareholders, owners, ~~[members]~~, attorneys, insurers, predecessors, successors, assigns ~~[subsidiaries]~~, employees, parent and subsidiary companies, affiliates, holding companies, joint ventures, insurers and re-insurers, present and former spouses and heirs.

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

~~1.28.~~ XYZ means named Defendant \_\_\_\_\_.

## ~~2.~~ **2. RECITALS:**

~~2.1.~~ On \_\_\_\_\_ October 30, 2023, Plaintiff ~~commenced this Action by filing~~filed a Complaint alleging

causes of action against XYZ Defendants for (1) failure to pay all wages earned for all hours worked [Lab. Code, §§ 510, 1194, 1197, and 1198]; (2) failure to provide rest breaks [Lab. Code, §§ 226.7, 1198]; (3) failure to provide meal periods [Lab. Code, §§ 226.7, 512, 1198]; (4) failure to indemnify [Lab. Code, § 2802]; (5) failure to provide accurate itemized wage statements [Lab. Code, § 226]; (6) failure to pay wages when employment ends [Lab. Code, §§ 201, 202, 203]; (7) failure to pay wages owed every pay period [Lab. Code, § 204]; (8) imposition of civil penalties pursuant to California Private Attorneys General Act (“PAGA”) [Lab. Code, §§ 2698, et seq.]; (9) age discrimination in violation of the Fair Employment and Housing Act (“FEHA”) [Gov. Code, § 12940(a)]; (10) disability discrimination [Gov. Code, §§ 12940(a); 12926(m)]; (11) failure to engage in the interactive process [Gov. Code, § 12940(n)]; (12) failure to accommodate disability [Gov. Code, § 12940(m)]; (13) retaliation in violation of the FEHA [Gov. Code, § 12940(h)]; (14) failure to prevent discrimination in violation of the FEHA [Gov. Code, §§ 12940(k)]; (15) wrongful termination in violation of the FEHA [Gov. Code, § 12940(a)]; (16) wrongful termination in violation of public policy; and (17) unfair competition [Bus. & Prof. Code, §§ 17200, et seq.]. The Complaint is the operative complaint in the Action (the “Operative Complaint.”) [On \_\_, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for \_\_\_\_\_.

~~2.1.~~ The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative Complaint.”). XYZ denies.”]. Defendants deny the allegations in the

Operative Complaint, ~~denies~~deny any failure to comply with the laws identified in in the Operative Complaint and ~~denies~~deny any and all liability for the causes of action alleged.

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

~~2.3.~~ On \_\_\_\_\_ (type in additional dates \_\_\_\_\_),

☐ On June 26, 2024, the Parties participated in an all-day mediation presided over by—

~~2.3.~~ Todd A. Smith, Esq. which led to this Agreement to settle the Action.

☐ \_\_\_\_\_ (describe alternative means of negotiation)\_\_\_\_\_.

~~2.4.~~ Prior to ~~E~~ mediation ~~E negotiating the Settlement~~, Plaintiff obtained, through

~~2.4.~~ ☐ formal ☐ informal discovery, — anonymized time and payroll data for all Aggrieved Employees for the PAGA Period July 21, 2022, through April 15, 2024.

~~2.5.~~ ~~2.5.~~ The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### 3. ~~3.~~ MONETARY TERMS:

~~3.1. Gross Settlement Amount:~~ Except as otherwise provided by Paragraph ~~98~~ below, ~~XYZ~~

~~3.1. STADCO~~ promises to pay \$~~Two Hundred Five Thousand Dollars and Zero Cents (\$205,000.00)~~ and no more as the Gross Settlement Amount. ~~XYZ STADCO~~ has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement.<sup>iii</sup> The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ~~XYZSTADCO~~.

~~3.2. 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. 3.2.1. To the Administrator: An Administrator Expenses Payment not to exceed \$4,000.00 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 \$4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.~~

To PAGA Counsel: A PAGA Counsel Fees Payment of not more than ~~—%33%~~ which is currently estimated to be \$~~68,333.33~~ and PAGA Counsel Litigation Expenses Payment of not more than \$~~XYZ10,000.00~~. ~~STADCO~~ will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds ~~XYZSTADCO~~ harmless, and indemnifies ~~XYZSTADCO~~, from any dispute or controversy regarding any division or sharing of any of these Payments.

~~3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$ 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 \$, the Administrator will retain the remainder in the Net Settlement Amount.~~

~~3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ \$122,666.67 to be paid from the Gross Settlement Amount, with 75%~~

~~3.2.3. (\$amount (\$92,000.00) allocated to the LWDA PAGA Payment and 25% (\$ 30,666.67) allocated to the Individual PAGA Payments.~~

~~3.2.3.1.~~ The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$           30,666.67          ) by the total number of PAGA ~~Period~~ Pay Periods worked

~~3.2.3.1.~~ 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.

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

#### 4. ~~4.~~ **SETTLEMENT FUNDING AND PAYMENTS.**

~~4.1.~~ Aggrieved Employee Pay Periods. Based on a review of its records to date, ~~XYZ~~  
~~4.1.~~ STADCO estimates there are 92 Aggrieved Employees who worked a total \_\_\_\_\_  
of 5,127 PAGA Pay Periods.

~~4.2.~~ Aggrieved Employee Data. Within ~~[e.g., 15]~~30 days, ~~XYZ~~ of the Effective Date,  
STADCO will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. ~~XYZ~~STADCO has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which ~~XYZ~~STADCO must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

~~4.3.~~ Funding of Gross Settlement Amount. ~~XYZ~~STADCO shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than ~~[14]~~30 days after the Effective Date.

~~4.4.~~ Payments from the Gross Settlement Amount. Within ~~[e.g., 14]~~15 days after ~~XYZ~~STADCO funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

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

4.4.1. ~~4.4.1.~~ Administrator must update the recipients' mailing addresses using the National Change of Address Database. Together with the Individual PAGA Payments, the Settlement Administrator will issue each Aggrieved Employee an explanatory letter in the form attached as Exhibit A.

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

4.4.3. ~~4.4.3.~~ For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks ~~to the California~~ Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

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

**5.—RELEASES**RELEASE **OF CLAIMS.** Effective on the date when XYZSTADCO fully funds the entire Gross

5. Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1. ~~5.1~~—Plaintiff's Release. Plaintiff and his~~-or-her~~ respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences ~~[that occurred during the PAGA Period]~~, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that 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. ~~5.1.1~~—Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

**5.2 Release by Aggrieved Employees:**

**5.2. .** All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties 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 the PAGA Notice, including California Labor Code sections 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, 2804, and IWC Wage Order 1, §§ 2(E), 7, 11-12.

**5.3 Release by PAGA Counsel:**

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

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

**6.1. 6.1 — Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA 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. 6.2~~ Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than ~~{(30)}~~ days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

~~6.3. 6.3~~ Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

~~6.4~~ Notice to LWDA. Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall submit to the LWDA a copy of this Settlement Agreement and all supporting approval documents at the same time that Plaintiff submits it to the Court for approval.

## 7. SETTLEMENT ADMINISTRATION.

~~7.1~~ Selection of Administrator. The Parties have jointly selected Phoenix Class Action Settlement Administration Solutions, to serve as the Settlement Administrator and verified that, as a

~~7.1.~~ condition of appointment,—Phoenix Class Action Settlement Administration Solutions 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, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

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

~~8.—AGGRIEVED EMPLOYEE SIZE ESTIMATES [and ESCALATOR CLAUSE]~~  
~~Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1)~~

there are \_\_\_\_\_ Aggrieved Employees who worked \_\_\_\_\_ Pay Periods during the  
PAGA Period.<sup>iv</sup>

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATE AND ESCALATOR CLAUSE.** Based on its records, STADCO estimates that there are 92 Aggrieved Employees who incurred a projected cumulative total of 5,127 pay periods during the PAGA Period through payroll of June 27, 2024. Should the number of pay periods during the PAGA Period increase by more than 10%, STADCO will have the option to either (a) increase the Gross Settlement Amount by the percentage in excess of 10% above 5,127, or (b) shorten the release period to alleviate any increase in the Gross Settlement Amount. For example, if the final number of pay periods of the Aggrieved Employees is 11% higher than 5,127 as estimated hereinabove, the gross settlement amount would be increased by one percent (1%). In the alternative, if the increase in the Gross Settlement Amount attributable to excess pay periods is not financially feasible for STADCO, STADCO may select a date prior to entry of the Approval Order as the termination date for the PAGA Period in order to lessen the escalator payment obligation component of the Gross Settlement Amount.

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

**9.1. 9.1—Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

## 10. **ADDITIONAL PROVISIONS.**

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

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

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

~~10.4~~ Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things,

10.4. modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

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

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

10.7. ~~10.7~~ Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

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

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

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

~~Party on the basis that the Party was the drafter or participated in the drafting.~~

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

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

10.12. Settlement Funds, ~~XYZ~~STADCO makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13.~~10.13~~ Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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

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

To Plaintiff:

MM Law, APC  
500 N. Brand Blvd., Suite 2000  
Glendale, CA 91203

To ~~XYZ~~ Defendants:

~~10.16.~~ FREEMAN MATHIS & GARY, LLP  
Attn: Daniel Parker Jett and Elizabeth M. Potts  
550 South Hope Street, Suite 2200  
Los Angeles, CA 90071-2631

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

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

\_\_\_\_\_  
For Plaintiff

\_\_\_\_\_  
For XYZ

\_\_\_\_\_  
Counsel For Plaintiff

\_\_\_\_\_  
Counsel For XYZ

---

~~This Form PAGA Settlement Agreement has been approved by the Court, the complex litigation judges and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour cases. It was drafted for settlements of single plaintiff PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple Plaintiffs or multiple Defendants. For settlements of wage and hour class actions that include PAGA claims, please use the Form Class Action and PAGA Settlement Agreement and Class Notice.~~

~~ii See endnote ii above. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS OR APPLICATIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

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

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

DATE

ANDRES IBARRA

**STADCO**

DATE

Bret Matta, President

**APPROVED AS TO FORM**

**MM LAW APC**

DATE

Maralle Messrelian  
Attorneys for Plaintiff, Andres Ibarra

**FREEMAN MATHIS & GARY, LLP**

DATE

Daniel Parker Jett  
Elizabeth M. Potts  
Attorneys for Defendants STADCO and Bret  
Matta

# EXHIBIT A

**NOTICE OF PAGA SETTLEMENT**

Andres Ibarra v. STADCO, et al.

Los Angeles County Superior Court, Case No. 23STCV26591

<<Settlement Administrator >>

[ ]

[ ]

Telephone: [ ]

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

-

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act (“PAGA”) [Cal. Lab. Code, §§ 2698, et seq.] (“the Action”). The plaintiff in the Action is Andres Ibarra (“Plaintiff”) and the defendants are STADCO and Bret Matta (collectively, “Defendants”). The Action seeks to impose civil penalties for purported violations of the California Labor Code on behalf of all persons within the State of California who are or were employed by STADCO in the State of California and classified as non-exempt during the PAGA Period of July 21, 2022, through the date of entry of the Order approving the PAGA settlement agreement (the “Aggrieved Employees”). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants and their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys. The released PAGA claims shall include all known or unknown claims for civil penalties, attorneys’ fees and costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly plead in the operative Complaint and all other Labor Code claims that could have been asserted based on the facts and allegations plead in the operative Complaint, including but not limited to: California Labor Code Sections §§ 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, 2804, and IWC Wage Order 1, §§ 2(E), 7, 11-12.

By Order dated <<court approval order date>>, the Superior Court of the State of California, Los Angeles County approved the Settlement of the PAGA claims.

According to the STADCO's records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee .

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties, which may be subject to local, state, or federal taxes, and will be reported to the IRS and state tax authorities via Form 1099. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Phoenix Class Action Settlement Administration Solutions (the Settlement Administrator) using the contact information at the top of this correspondence.

# **EXHIBIT 3**

## NOTICE OF PAGA SETTLEMENT

*Andres Ibarra v. STADCO, et al.*  
*Los Angeles County Superior Court, Case No. 23STCV26591*

<<Settlement Administrator >>

[ ]  
[ ]

Telephone: [ ]

«Barcode» «BarcodeString»

SIMID «SIMID»

«FirstName»

«LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act (“PAGA”) [Cal. Lab. Code, §§ 2698, *et seq.*] (“the Action”). The plaintiff in the Action is Andres Ibarra (“Plaintiff”) and the defendants are STADCO and Bret Matta (collectively, “Defendants”). The Action seeks to impose civil penalties for purported violations of the California Labor Code on behalf of all persons within the State of California who are or were employed by STADCO in the State of California and classified as non-exempt during the PAGA Period of July 21, 2022, through the date of entry of the Order approving the PAGA settlement agreement (the “Aggrieved Employees”). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants and their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys. The released PAGA claims shall include all known or unknown claims for civil penalties, attorneys’ fees and costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly plead in the operative Complaint and all other Labor Code claims that could have been asserted based on the facts and allegations plead in the operative Complaint, including but not limited to: California Labor Code Sections §§ 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, 2804, and IWC Wage Order 1, §§ 2(E), 7, 11-12.

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According to the STADCO's records, you are an Aggrieved Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee .

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Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Phoenix Class Action Settlement Administration Solutions (the Settlement Administrator) using the contact information at the top of this correspondence.

# **EXHIBIT 4**



**MM LAW**  
A Professional Corporation

500 N. Central Ave., Suite 840  
Glendale, CA 91203  
Tel: 818-810-7747  
Fax: 818-230-9018  
maralle@mmlawapc.com

July 21, 2023

**NOTICE VIA ONLINE SUBMISSION**

California Labor & Workforce Development Agency (LWDA)  
Attn: PAGA Administrator  
<https://dir.tfaforms.net/308>

**VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

STADCO  
BRET MATTA  
C/O CSC LAWYERS INCORPORATING SERVICE, AGENT  
2710 GATEWAY OAKS DRIVE # 150-N  
SACRAMENTO, CA 95833

STADCO  
BRET MATTA  
107 S. AVENUE 20  
LOS ANGELES, CA 90031

TECHPRECISION CORPORATION  
1 BELLA DRIVE  
WESTMINSTER, MA 01473

**Re: Andres Ibarra/STADCO  
Private Attorneys General Act**

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA"), Mr. Andres Ibarra (hereafter "Ibarra") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt or hourly paid employees (hereafter the "Aggrieved Employees"), by STADCO, a California corporation, BRET MATTA, an individual, and TECHPRECISION CORPORATION, a Delaware corporation (hereafter collectively "STADCO"), of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802. Bret Matta is being included in this PAGA notice pursuant to Labor Code Section 558.1 as he was and is an owner/director/managing agent of STADCO, was involved in the day-to-day operations of the business, and as such, controlled the wages, hours, and working conditions of Ibarra and the other Aggrieved Employees. On behalf of himself and all other Aggrieved Employees, Ibarra hereby

provides this notice to the Labor & Workforce Development Agency and STADCO and its agents and representatives.

At all relevant times, STADCO has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Ibarra and the Aggrieved Employees are “employees” within the meaning of Wage Order 1-2001 (hereafter “the Wage Order”) § 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

### **STATEMENT OF FACTS**

STADCO began to employ Ibarra over 26 years ago, in or around 1997, as a welding tech to work at its facility located at 107 S. Avenue 20 in Los Angeles, California. STADCO continuously employed Ibarra in that capacity until on or about June 15, 2023 when his employment ended.

At all relevant times, STADCO issued wages to Ibarra and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, STADCO classified Ibarra and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. During his tenure, Ibarra generally worked Monday through Saturday (3 Saturdays a month), from approximately 6:30 a.m. to 3:00 p.m. to 5:00 p.m., and his latest rate of pay was approximately \$32.00 per hour.

STADCO failed to pay Ibarra and other Aggrieved Employees for all time worked or subject to its control. This is so because STADCO had a policy wherein it would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in Aggrieved Employees not being paid for all hours worked. Moreover, supervisors would often instruct Ibarra to continue welding after he had already clocked out for the end of his shift. Ibarra often spent up to two hours continuing to weld after clocking out. Furthermore, and to the extent that Ibarra and others worked through their meal periods while “off the clock”, they were not compensated for all hours worked, which would be akin to a minimum wage violation. “Off the clock” work also included Ibarra receiving phone calls or text message on his personal cell phone from management before or after his shifts to discuss work-related issues.

Due to the above “off the clock” violations, STADCO failed to pay Ibarra and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees the accurate amount of overtime, especially since the “off the clock” work was not factored into the equation. Furthermore, any incentive payments and/or bonus payments were not factored into employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

STADCO failed to provide all compliant meal periods and authorize and permit all compliant rest periods to which Ibarra and the other Aggrieved Employees were entitled. Ibarra and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked. However, Ibarra and the Aggrieved Employees did not always receive their meal and rest periods on time. Moreover, even when Ibarra and other Aggrieved Employees would be clocked out for a meal period or would be on their rest breaks, STADCO management would interrupt them with questions about work related matters. Ibarra was often interrupted by his manager, Eduardo Aguilar, asking questions about how much time it would take to finish a task, among others. On information and belief, STADCO did not keep track of Ibarra's and the Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th 58, where time records do not facially show an employee took a compliant meal period, a rebuttable presumption arises that the employer failed to provide it, giving rise to a meal period violation. On information and belief, STADCO did not provide premium wages for these meal and rest break violations; if STADCO did provide premium wages, they were not paid at the correct rate, as explained above.

STADCO failed to reimburse Ibarra and the other Aggrieved Employees for business expenses they incurred in direct consequence of the discharge of their duties. During his employment, Ibarra purchased numerous tools, including but not limited to, an electronic welding helmet, welding gloves, crescent wrenches, pipe wrench, screwdrivers, pliers, drill gun, drill bits, meter to check fuses, meter to check heater elements, prybars, a big rollaway, and a toolbox, among others, in order to perform his work. However, STADCO did not provide these tools and did not reimburse Ibarra and the other Aggrieved Employees for these tool expenses. STADCO also required Ibarra and the other Aggrieved Employees to use their own personal cell phones to communicate with management concerning work matters. STADCO did not reimburse Ibarra or the other employees for their mobile phone expenses. Accordingly, STADCO was in violation of California Labor Code sections 2800 and 2802.

STADCO failed to pay its employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. STADCO did not provide Ibarra and other Aggrieved Employees accurate, itemized wage statements. Wage statements must include, among other things, total hours worked by the employee. Labor Code § 226(a)(2). STADCO issued wage statements that inaccurately reflected total hours worked, gross and net wages earned, and the number of hours worked at each hourly rate because of STADCO's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). STADCO's failure to maintain accurate records as to the hours worked daily by employees also constitutes a violation of Labor Code section 1174(d).

Finally, because STADCO did not properly pay all wages earned as explained herein, STADCO also failed to pay final wages owed to Ibarra and other Aggrieved Employees in violation of Labor Code section 203. These earned but unpaid wages include minimum wages and compensation for

all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

Moreover, Ibarra would also have claims under the Fair Employment and Housing Act (“FEHA”) for age discrimination, disability discrimination, failure to accommodate disability, failure to engage in the interactive process, retaliation in violation of the FEHA, wrongful termination in violation of public policy, intentional infliction of emotional distress, and negligent infliction of emotional distress, among others. On or around March 21, 2022, Ibarra had heart related surgery which STADCO was unequivocally aware of. Ibarra provided STADCO with notes from his physician placing him off work until June 24, 2022 due to his physical disability. Ibarra returned to work on June 25, 2022. Approximately one week after Ibarra returned to work, STADCO informed Ibarra that he was being “put on hold” until the company got back a contract for work. On information and belief, one of Ibarra’s younger co-workers, Eduardo Marcian, whom Ibarra had trained, continued to work for STADCO. On information and belief, Brandon Aguilar, manager Eduardo Aguilar’s son, who was being trained to work alongside Eduardo Marcian, also continued to be employed by STADCO. STADCO had no further communication with Ibarra about returning to work. Since then, Ibarra has tried calling his manager, Eduardo Aguilar, and plant manager, Bret Matta, to no avail. On or around June 5, 2023, Ibarra contacted STADCO’s Human Resources department to inquire about his job. Diana Lew from STADCO’s Human Resources department emailed Ibarra that she would look into this and that he was not terminated in their system. Ibarra sent a follow up email on June 15, 2023. On or around June 15, 2023, STADCO sent a layoff/termination letter to Ibarra stating that they still do not have any work available for him. Ibarra’s termination was unequivocally discriminatory. STADCO hastily terminated Ibarra, a 26- year employee with a stellar performance record, without engaging in the interactive process or accommodating his disability. STADCO discriminated against Ibarra based on his age and physical disability and wrongfully terminated his employment in violation of public policy.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Ibarra alleges that STADCO committed the following violations of the California Labor Code and the Wage Order: 1) failed to pay wages for all time worked or subject to STADCO’ control, including correctly-calculated overtime wages; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to reimburse reasonably necessary business expenses; 5) failed to provide compliant wage statements; 6) failed to maintain accurate records; and 7) failed to timely pay all wages owed during and upon separation of employment.

Accordingly, Ibarra now seeks civil penalties on behalf of himself and the Aggrieved Employees based on STADCO’s alleged violations of the California Labor Code and the Wage Order.

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### **THE WAGE ORDER**

The Wage Order applies to “all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis[.]” § 1. The Wage Order defines “manufacturing industry” to include:

“any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest; Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry.” § 2(H).

At all relevant times, STADCO engaged in manufacturing parts for the aerospace industry. Accordingly, Ibarra and the Aggrieved Employees are entitled to the protections afforded by the Wage Order.

### **FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY**

Labor Code §§ 510, 558, 1194, 1197, and 1198

Labor Code sections 510, 1194, and 1197 require employers to pay the wages agreed to and at least minimum wages for all time under the employer’s control, overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee’s regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee’s regular rate of pay. Labor Code section 558 establishes a civil penalty for violation of Labor Code section 510. Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

STADCO failed to pay all minimum, regular, and overtime wages to Ibarra and other Aggrieved Employees because STADCO paid wages based on rounded times, did not pay for off-the-clock work, and failed to pay overtime wages based on correct regular rates of pay.

### **FAILURE TO PROVIDE MEAL PERIODS**

Labor Code §§ 226.7, 512, and 1198

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) §§ 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

STADCO failed to provide Ibarra and other Aggrieved Employees with compliant meal periods and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

#### **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

Labor Code § 226.7 & 1198

The Rest Period section of the applicable Wage Order provides: “Every employer shall authorize and permit all 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.” IWC Wage Order(s), § 12(A). If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee’s regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Labor Code § 226.7(c); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

STADCO failed to authorize and permit Ibarra and other Aggrieved Employees to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

#### **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

Labor Code §§ 226

California employers are required to provide itemized wage statements showing, among other things, “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Labor Code §§ 226(a)(1), (2), (5), (9).

STADCO did not provide itemized wage statements accurately reflecting Ibarra’s and other Aggrieved Employees’ gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each rate.

#### **FAILURE TO PROVIDE ACCURATE RECORDS**

Labor Code §§ 1174, 1174.5, 1198; IWC Wage Order(s), § 7

An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code §1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

Because STADCO rounded employees’ time worked, did not record off-the-clock work, and interrupted employees’ meal periods, STADCO failed to maintain accurate records as to the hours worked daily by employees and as to when each work period and meal period began and ended.

### **FAILURE TO REIMBURSE FOR EXPENSES**

Labor Code §§ 1198, 2802, and 2804

An employer must reimburse its employees for their reasonable business-related expenses. Labor Code § 2802. The right to reimbursement cannot be waived. Labor Code § 2804.

STADCO failed to reimburse Ibarra and other Aggrieved Employees for their reasonable business-related expenses, including use of their own personal tools and personal cell phones in effectuating their job duties.

### **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT & UPON SEPARATION**

Labor Code §§ 201-204

An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its failure to pay all wages earned, as described above, STADCO failed to pay all final wages due to Ibarra and other Aggrieved Employees and violated Labor Code Sections 201-204.

### **PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES LABOR CODE**

Labor Code § 558.1

In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages 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.

At all relevant times, Bret Matta was an employer of Ibarra and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of STADCO. Bret Matta directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of Ibarra and the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Aggrieved Employees, Ibarra seeks the same civil penalties against Bret Matta on the same grounds for which he seeks civil penalties against STADCO.

**CONCLUSION**

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that Andres Ibarra will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maralle Messrelan".

Maralle Messrelan, Esq.  
[maralle@mmlawapc.com](mailto:maralle@mmlawapc.com)

# **EXHIBIT 5**

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ANDRES IBARRA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

**(UNLIMITED JURISDICTION)**

ANDRES IBARRA,

*Plaintiff,*

vs.

STADCO, a California corporation; BRETT  
MATTA, an individual; and DOES 1 to 25,  
inclusive,

*Defendants.*

Case No.: **23STCV26591**

**COMPLAINT FOR DAMAGES FOR:**

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 9) Age Discrimination in Violation of the Fair Employment and Housing Act (“FEHA”) (Gov. Code § 12940(a));
- 10) Disability Discrimination (Gov. Code, §§ 12940(a); 12926(m));
- 11) Failure to Engage in the Interactive Process (Gov. Code, § 12940(n));

- 12) Failure to Accommodate Disability (Gov. Code, § 12940(m));
- 13) Retaliation in Violation of the FEHA (Gov. Code, § 12940(h));
- 14) Failure To Prevent Discrimination in Violation of the FEHA (Gov. Code, §§ 12940(k));
- 15) Wrongful Termination in Violation of the FEHA (Gov. Code § 12940(a));
- 16) Wrongful Termination in Violation of Public Policy; and
- 17) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

**JURY TRIAL DEMANDED**

COMES NOW Plaintiff, ANDRES IBARRA (hereafter “Plaintiff”), and complains and alleges as follows:

**INTRODUCTION**

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against STADCO, a California corporation; BRETT MATTA, an individual; and DOES 1 to 25, inclusive, (collectively “STADCO” or “Defendants”).

**JURISDICTION AND VENUE**

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Los Angeles – Central District because Defendants STADCO, BRETT MATTA, and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

**THE PARTIES**

3. Plaintiff Andres Ibarra is a 47-year-old male resident of Los Angeles,

1 California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8  
2 California Code of Regulations Section 11010 and an “Aggrieved Employee” within the  
3 meaning of Labor Code Section 2699(c).

4 4. Defendant STADCO is and was a California corporation, doing business in Los  
5 Angeles County, and which employed Plaintiff. As such, it is a citizen of California based on  
6 Plaintiff’s information and belief.

7 5. Defendant BRETT MATTA is a citizen of California based on Plaintiff’s  
8 information and belief.

9 6. In relevant part, Labor Code section 558.1 states:

10 (a) Any employer or other person acting on behalf of an employer, who violates,  
11 or causes to be violated, any provision regulating minimum wages or hours and  
12 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.

13 (b) For purposes of this section, the term “other person acting on behalf of an  
14 employer” is limited to a natural person who is an owner, director, officer, or  
15 managing agent of the employer, and the term “managing agent” has the same  
meaning as in subdivision (b) of Section 3294 of the Civil Code.

16 7. Based on Plaintiff’s information and belief, Defendant BRETT MATTA is a  
17 natural person, and an owner, director, officer, and/or managing agent of STADCO, who  
18 directly or indirectly, or through his agent, employed or exercised control over the wages,  
19 hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below).  
20 Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations of, or  
21 causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant  
22 to Labor Code section 558.1.

23 8. The “Aggrieved Employees” are all current and former non-exempt or hourly  
24 paid employees who worked for Defendants in California during the relevant time period  
25 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys  
26 General Act of 2004 (“PAGA”).

27 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
28 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but

1 is informed and believes and thereon alleges that said defendants are legally responsible for the  
2 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.  
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE  
4 defendants when ascertained.

5 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
6 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
7 remaining Defendants, and in doing the things hereinafter alleged, were acting within the  
8 course and scope of such agency or employment, and with the approval and ratification of each  
9 of the other Defendants.

10 11. Plaintiff is informed and believes and thereon alleges that each and every one of  
11 the acts and omissions alleged herein were performed by, and/or are attributable to, all  
12 Defendants, each acting as agents and/or employees, and/or under the direction and control of  
13 each of the other Defendants, and that said acts and failures to act were within the course and  
14 scope of said agency, employment, and/or direction and control.

15 12. At all relevant times, in perpetrating the acts and omissions alleged herein,  
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a  
17 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved  
18 Employees in accordance with applicable California labor laws as alleged herein.

19 **GENERAL ALLEGATIONS**

20 13. STADCO began to employ Plaintiff in or around November 1998 as a welding  
21 tech to work at its facility located at 107 S. Avenue 20 in Los Angeles, California. Plaintiff  
22 continuously worked for Defendants for the next twenty-five years until the date of his  
23 wrongful and unlawful termination on June 15, 2023. Throughout his 25-year employment  
24 tenure, Plaintiff was a stellar employee of STADCO, earning positive reviews and raises, and  
25 did not have any write-ups whatsoever.

26 14. At all relevant times, STADCO issued wages to Plaintiff and all of the other  
27 Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times,  
28 STADCO classified Plaintiff and all of the other Aggrieved Employees as non-exempt

1 employees entitled to the protections of the Labor Code and the Wage Order. During his  
2 tenure, Plaintiff generally worked Monday through Saturday (3 Saturdays a month), from  
3 approximately 6:30 a.m. to 3:00 p.m. or to 5:00 p.m., and his latest rate of pay was  
4 approximately \$32.00 per hour.

5 15. STADCO failed to pay Plaintiff and other Aggrieved Employees for all time  
6 worked or subject to its control. This is so because STADCO had a policy wherein it would  
7 disproportionately round down the number of hours worked, resulting in “time shaving” and  
8 further resulting in Aggrieved Employees not being paid for all hours worked. Moreover,  
9 supervisors would often instruct Plaintiff to continue welding after he had already clocked out  
10 for the end of his shift. Plaintiff often spent up to two hours continuing to weld after clocking  
11 out. Furthermore, and to the extent that Plaintiff and others worked through their meal periods  
12 while “off the clock”, they were not compensated for all hours worked, which would be akin  
13 to a minimum wage violation. “Off the clock” work also included Plaintiff receiving phone  
14 calls or text message on his personal cell phone from management before or after his shifts to  
15 discuss work-related issues.

16 16. Due to the above “off the clock” violations, STADCO failed to pay Plaintiff  
17 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved  
18 Employees’ actual work hours, which included the “off the clock” work as described above,  
19 entitled them to overtime, however, it was not company policy to keep accurate track of all  
20 hours worked and to pay employees the accurate amount of overtime, especially since the “off  
21 the clock” work was not factored into the equation. Furthermore, any incentive payments  
22 and/or bonus payments were not factored into employees’ regular rate of pay for purposes of  
23 deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments  
24 were not factored into the correct meal and rest break premium pay per *Ferra v. Loews*  
25 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

26 17. STADCO failed to provide all compliant meal periods and authorize and permit  
27 all compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.  
28 Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-

1 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-  
2 minute rest periods for every four hours or major fraction thereof worked. However, Plaintiff  
3 and the Aggrieved Employees did not always receive their meal and rest periods on time.  
4 Moreover, even when Plaintiff and other Aggrieved Employees would be clocked out for a  
5 meal period or would be on their rest breaks, STADCO management would interrupt them  
6 with questions about work related matters. Plaintiff was often interrupted by his manager,  
7 Eduardo Aguilar, asking questions about how much time it would take to finish a task, among  
8 others. On information and belief, STADCO did not keep track of Plaintiff's and the  
9 Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th  
10 58, where time records do not facially show an employee took a compliant meal period, a  
11 rebuttable presumption arises that the employer failed to provide it, giving rise to a meal  
12 period violation. On information and belief, STADCO did not provide premium wages for  
13 these meal and rest break violations; if STADCO did provide premium wages, they were not  
14 paid at the correct rate, as explained above.

15 18. STADCO failed to reimburse Plaintiff and the other Aggrieved Employees for  
16 business expenses they incurred in direct consequence of the discharge of their duties. During  
17 his employment, Plaintiff purchased numerous tools, including but not limited to, an electronic  
18 welding helmet, welding gloves, crescent wrenches, pipe wrench, screwdrivers, pliers, drill  
19 gun, drill bits, meter to check fuses, meter to check heater elements, prybars, a big rollaway,  
20 and a toolbox, among others, in order to perform his work. However, STADCO did not  
21 provide these tools and did not reimburse Plaintiff and the other Aggrieved Employees for  
22 these tool expenses. STADCO also required Plaintiff and the other Aggrieved Employees to  
23 use their own personal cell phones to communicate with management concerning work  
24 matters. STADCO did not reimburse Plaintiff or the other employees for their mobile phone  
25 expenses. Accordingly, STADCO was in violation of California Labor Code sections 2800  
26 and 2802.

27 19. STADCO failed to pay its employees all wages due to them within any time  
28 period specified by California Labor Code section 204, including the minimum wages and

1 overtime as described above as well as meal/rest break premiums. STADCO did not provide  
2 Plaintiff and other Aggrieved Employees accurate, itemized wage statements. Wage  
3 statements must include, among other things, total hours worked by the employee. Labor Code  
4 § 226(a)(2). STADCO issued wage statements that inaccurately reflected total hours worked,  
5 gross and net wages earned, and the number of hours worked at each hourly rate because of  
6 STADCO's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2),  
7 (5), (9). STADCO's failure to maintain accurate records as to the hours worked daily by  
8 employees also constitutes a violation of Labor Code section 1174(d).

9         20. Finally, because STADCO did not properly pay all wages earned as explained  
10 herein, STADCO also failed to pay final wages owed to Plaintiff and other Aggrieved  
11 Employees in violation of Labor Code section 203. These earned but unpaid wages include  
12 minimum wages and compensation for all hours worked, overtime compensation, premium  
13 pay for missed meal and rest breaks, and business expense reimbursement, among others.

14         21. Moreover, Plaintiff would also have claims under the Fair Employment and  
15 Housing Act ("FEHA") for age discrimination and disability discrimination. On or around  
16 March 21, 2022, Plaintiff had heart surgery which STADCO was unequivocally aware of.  
17 Plaintiff provided STADCO with notes from his physician placing him off work until June 24,  
18 2022 due to his physical disability. Plaintiff returned to work on June 25, 2022 with a  
19 restriction of no heavy lifting. Approximately one week after Plaintiff returned to work,  
20 STADCO informed Plaintiff that he was being "put on hold" until the company got back a  
21 contract for work. On information and belief, one of Plaintiff's younger co-workers, Eduardo  
22 Marcian, whom Plaintiff had trained, continued to work for STADCO. On information and  
23 belief, Brandon Aguilar, manager Eduardo Aguilar's son, who was being trained to work  
24 alongside Eduardo Marcian, also continued to be employed by STADCO. STADCO had no  
25 further communication with Plaintiff about returning to work. Since then, Plaintiff tried calling  
26 his manager, Eduardo Aguilar, and plant manager, Bret Matta, to no avail. On or around June  
27 5, 2023, Plaintiff contacted STADCO's Human Resources department to inquire about his job.  
28 Diana Lew from STADCO's Human Resources department emailed Plaintiff that she would

1 look into this and that he was not terminated in their system. Plaintiff sent a follow up email  
2 on June 15, 2023. On or around June 15, 2023, STADCO sent a layoff/termination letter to  
3 Plaintiff stating that they still do not have any work available for him. Plaintiff's termination  
4 was unequivocally discriminatory. STADCO hastily terminated Plaintiff, a 25- year employee  
5 with a stellar performance record, without engaging in the interactive process or  
6 accommodating his disability. STADCO discriminated against Plaintiff based on his  
7 age/related seniority status in the company and his physical disability and wrongfully  
8 terminated his employment in violation of public policy.

9 22. Pursuant to California Government Code § 12960, Plaintiff has exhausted his  
10 administrative remedies. Plaintiff filed a complaint with the State of California Civil Rights  
11 Department ("CRD") (previously "DFEH") alleging claims in this complaint. On the same  
12 day, the CRD issued a notice of right-to-sue to Plaintiff against the named Defendants.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

15 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

16 **(By Plaintiff against all Defendants)**

17 23. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

18 24. At all relevant times, Plaintiff was a non-exempt employee of Defendants and  
19 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,  
20 and the Wage Order.

21 25. Section 2(K) of the Wage Order defines "hours worked" as "the time during  
22 which an employee is subject to the control of an employer, and includes all the time the  
23 employee is suffered or permitted to work, whether or not required to do so."

24 26. Section 3 of the Wage Order states:

#### 25 **(A) Daily Overtime - General Provisions**

26 (1) The following overtime provisions are applicable to  
27 employees 18 years of age or over and to employees 16 or  
28 17 years of age who are not required by law to attend  
school and are not otherwise prohibited by law from  
engaging in the subject work. Such employees shall not

1 be employed more than eight (8) hours in any workday or  
2 more than 40 hours in any workweek unless the employee  
3 receives one and one-half (1 ½) times such employee's  
4 regular rate of pay for all hours worked over 40 hours in  
5 the workweek. Eight (8) hours of labor constitutes a day's  
6 work. Employment beyond eight (8) hours in any  
7 workday or more than six (6) days in any workweek is  
8 permissible provided the employee is compensated for  
9 such overtime at not less than:

10 (a) One and one-half (1 ½) times the employee's  
11 regular rate of pay for all hours worked in excess  
12 of eight (8) hours up to and including 12 hours in  
13 any workday, and for the first eight (8) hours  
14 worked on the seventh (7th) consecutive day of  
15 work in a workweek.

16 (b) Double the employee's regular rate of pay for  
17 all hours worked in excess of 12 hours in any  
18 workday and for all hours worked in excess of  
19 eight (8) hours on the seventh (7th) consecutive  
20 day of work in a workweek.

21 (c) The overtime rate of compensation required to  
22 be paid to a nonexempt full-time salaried  
23 employee shall be computed by using the  
24 employee's regular hourly salary as one-fortieth  
25 (1/40) of the employee's weekly salary.

26 27. Section 4 of the Wage Order requires an employer to pay non-exempt employees  
27 at least the minimum wage set forth therein for all hours worked, which consist of all hours that  
28 an employer has actual or constructive knowledge that employees are working.

29 28. Labor Code section 510 states:

30 Eight hours of labor constitutes a day's work. Any work in excess  
31 of eight hours in one workday and any work in excess of 40  
32 hours in any one workweek and the first eight hours worked on  
33 the seventh day of work in any one workweek shall be  
34 compensated at the rate of no less than one and one-half times the  
35 regular rate of pay for an employee. Any work in excess of 12  
36 hours in one day shall be compensated at the rate of no less than  
37 twice the regular rate of pay for an employee. In addition, any  
38 work in excess of eight hours on any seventh day of a workweek  
39 shall be compensated at the rate of no less than twice the regular  
40 rate of pay of an employee. Nothing in this section requires an

1 employer to combine more than one rate of overtime  
2 compensation in order to calculate the amount to be paid to an  
employee for any hour of overtime work.

3 29. California Labor Code § 1194 invalidates any agreement between an employer  
4 and an employee to work for less than the minimum wage required under the applicable Wage  
5 Order.

6 30. California Labor Code § 1197 makes it unlawful for an employer to pay an  
7 employee less than the minimum wage required under the applicable Wage Order for all hours  
8 worked during a payroll period.

9 31. California Labor Code § 1198 makes it unlawful for an employer to employ an  
10 employee under conditions that violate the Wage Order.

11 32. In conjunction, these provisions of the California Labor Code require employers  
12 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates  
13 for all hours worked, including unrecorded hours when the employer knew or reasonably should  
14 have known that employees were working during those hours. (*See Morillion v. Royal Packing*  
15 *Co.* (2000) 22 Cal.4th 575, 585.)

16 33. Defendants required Plaintiff to work in excess of eight (8) hours in one workday  
17 and forty (40) hours in one workweek without compensating him for such time worked at the  
18 premium rates required by California law.

19 34. As described more fully above, Defendants failed to pay all minimum, regular,  
20 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded  
21 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages  
22 based on correct regular rates of pay.

23 35. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an  
24 amount, subject to proof, to the extent that she was not paid the full amount of wages earned  
25 during each pay period during the applicable limitations period, including minimum, overtime,  
26 and double-time wages.

27 36. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for  
28 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,

1 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS**

4 **(Lab. Code §§ 226.7 and 1198)**

5 **(By Plaintiff against all Defendants)**

6 37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 38. At all relevant times during the applicable limitations period, Plaintiff was a  
8 non-exempt employee of Defendants and entitled to the benefits and protections of California  
9 Labor Code §§ 226.7, 1198, and the Wage Order.

10 39. Labor Code § 1198 states,

11 "The maximum hours of work and the standard conditions of labor  
12 fixed by the commission shall be the maximum hours of work and the  
13 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."

14 40. In relevant part, Section 12 of the Wage Order states:

15 Rest Periods:

16 (A) Every employer shall authorize and permit all employees  
17 to take rest periods, which insofar as practicable shall be in the  
18 middle of each work period. The authorized rest period time  
19 shall be based on the total hours worked daily at the rate often  
20 (10) minutes net rest time per four (4) hours or major fraction  
thereof. However, a rest period need not be authorized for  
employees whose total daily work time is less than three and  
one-half (3 1/2) hours. Authorized rest period time shall be  
counted as hours worked for which there shall be no deduction  
from wages.

22 (B) If an employer fails to provide an employee a rest period  
23 in accordance with the applicable provisions of this Order, the  
24 employer shall pay the employee one (1) hour of pay at the  
25 employee's regular rate of compensation for each work day that  
the rest period is not provided.

26 41. In addition, Labor Code Section 226.7 states

27 (b) An employer shall not require an employee to work during a  
28 meal or rest or 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.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited 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, 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.

42. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

43. Defendants failed to authorize and permit Plaintiff to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

44. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent she was not paid additional wages owed for all rest breaks not provided to him.

45. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO PROVIDE MEAL PERIODS**

**(Lab. Code §§ 226.7, 512, and 1198)**

**(By Plaintiff against all Defendants)**

46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

47. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

48. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any  
2 employee for longer hours than those fixed by the order or under  
conditions of labor prohibited by the order is unlawful.”

3 49. In relevant part, Labor Code Section 512 states

4 “An employer may not employ an employee for a work period of more  
5 than five hours per day without providing the employee with a meal  
6 period of not less than 30 minutes, except that if the total work period  
7 per day of the employee is no more than six hours, the meal period may  
8 be waived by mutual consent of both the employer and employee. An  
9 employer may not employ an employee for a work period of more than  
10 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 the employer and the employee only if the first meal  
period was not waived.”

11 50. In relevant part, Section 11 of the Wage Order states:

12 Meal Periods:

13 (A) No employer shall employ any person for a work period of more  
14 than five (5) hours without a meal period of not less than 30  
15 minutes, except that when a work period of not more than six (6)  
16 hours will complete the day’s work the meal period may be  
waived by mutual consent of the employer and the employee...

17 (B) If an employer fails to provide an employee a meal period in  
18 accordance with the applicable provisions of this order, the  
19 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.

20 51. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was  
21 entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he  
22 worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also  
23 entitled to a second 30-minute meal period when he worked more than ten (10) hours in a  
24 workday.

25 52. During the relevant time period, Defendants failed to provide Plaintiff with  
26 compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-  
27 calculated premium pay for each day such a meal period was not provided.

28 53. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in

1 an amount subject to proof to the extent he was not paid additional wages owed for all meal  
2 periods not provided to him.

3 54. By reason of the above, Plaintiff is entitled to premium wages for workdays in  
4 which one or more meal periods were not provided to him pursuant to California Labor Code  
5 § 226.7, plus interest and costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code §§ 1198 & 2802)**

9 **(By Plaintiff against all Defendants)**

10 55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 56. At all relevant times, Plaintiff was a non-exempt employee of Defendants and  
12 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the  
13 Wage Order.

14 57. In pertinent part, California Labor Code § 2802(a) states:  
15 An employer shall indemnify his or her employee[s] for all  
16 necessary expenditures incurred by the employee in direct  
consequence of the discharge of his or her duties.

17 58. California Labor Code § 1198 prohibits employers from employing their  
18 employees under conditions prohibited by the Wage Order.

19 59. STADCO failed to reimburse Plaintiff for business expenses he incurred in  
20 direct consequence of the discharge of his duties. STADCO required Plaintiff to provide and  
21 use his own tools, and to purchase specific tools to perform his assigned job duties. Such tools  
22 included, but are not limited to, an electronic welding helmet, welding gloves, crescent  
23 wrenches, pipe wrench, screwdrivers, pliers, drill gun, drill bits, meter to check fuses, meter to  
24 check heater elements, prybars, a big rollaway, and a toolbox, among others. However,  
25 STADCO did not provide these tools and did not reimburse Plaintiff for these tool expenses  
26 STADCO also required Plaintiff to use his own personal cell phone to communicate with office  
27 staff/management concerning work matters. However, STADCO did not reimburse Plaintiff for  
28 these mobile phone expenses. Accordingly, BERANEK was in violation of California Labor

1 Code sections 2800 and 2802.

2 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
3 Defendants have maintained a policy, practice, or a lack of a policy which resulted in  
4 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course  
5 of performing his duties.

6 61. By reason of the above, Plaintiff is entitled to reimbursement for all necessary  
7 expenditures and losses and interest due and owing to within three years (3) of the date of the  
8 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §  
9 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(California Labor Code Section 226)**

13 **(By Plaintiff against all Defendants)**

14 62. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 63. Pursuant to California Labor Code Section 226, every employer must furnish  
16 each employee an itemized statement of wages and deductions at the time of payment of wages.

17 64. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs  
18 that accurately reflected all information required by Labor Code Section 226, including but not  
19 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and  
20 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the  
21 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed  
22 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with  
23 California Labor Code Section 226(a).

24 65. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover  
25 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
26 violation occurs and one hundred dollars (\$100) per employee for each violation in a  
27 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),  
28 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of

1 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

2 66. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
3 sustained damages, including loss of earnings, in an amount to be established at trial. As a  
4 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,  
5 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs  
6 and attorney's fees pursuant to statute.

7 67. Under this cause of action, Plaintiff prays for penalties due under the statutes  
8 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
9 proof at trial.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

12 **(California Labor Code Sections 201-203)**

13 **(By Plaintiff against all Defendants)**

14 68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 69. Pursuant to California Labor Code Section 201(a), an employer who discharges  
16 an employee must immediately pay for all compensation due and owing.

17 70. Pursuant to California Labor Code Section 202, when an employee resigns, the  
18 employer must pay all compensation due and owing within 72 hours of resignation, or on the  
19 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

20 71. Pursuant to California Labor Code Section 203, if an employer willfully fails to  
21 pay, without abatement or reduction, any wages of an employee whose employment ends, the  
22 wages of the employee shall continue as a penalty from the due date at the same rate until paid  
23 or until an action is commenced; however, the wages shall not continue for more than 30 days  
24 for failure to pay an employee owed wages.

25 72. After Plaintiff's employment with Defendants ended, Defendants willfully  
26 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section  
27 203.

28 73. Under this cause of action, Plaintiff prays for penalties due under the statutes

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
2 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years  
3 immediately preceding the filing of this lawsuit.

4 74. Under this cause of action, Plaintiff also prays for attorney's fees and costs  
5 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages  
6 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

7 75. Under this cause of action, Plaintiff prays for penalties due under the statutes  
8 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
9 proof at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

12 **(California Labor Code Section 204)**

13 **(By Plaintiff against all Defendants)**

14 76. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

15 77. California Labor Code Section 204 establishes the fundamental right of all  
16 employees in the State of California to be paid wages in a timely fashion for their work.

17 78. At all times relevant during the liability period, Defendants failed to pay  
18 Plaintiff the full amount of all owed wages when due as required by California Labor Code  
19 Section 204.

20 79. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is  
21 informed, believes, and thereon alleges, that all times relevant during the applicable limitations  
22 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours  
23 worked, including the minimum wage, overtime hours, double time hours, and premium pay  
24 for missed meal and rest breaks.

25 80. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in  
26 an amount, subject to proof, to the extent he was not paid all wages each pay period. The  
27 precise amount of unpaid wages is not presently known to Plaintiff but can be determined  
28 directly from Defendants' records or indirectly based on information from Defendants' records.

1           81.     Under this cause of action, Plaintiff prays for penalties due under the statutes  
2 alleged along with any allowable interest, penalties, attorney's fees, and costs according to  
3 proof at trial.

4                                   **EIGHTH CAUSE OF ACTION**

5                                   **CIVIL PENALTIES**

6                                   **(Lab. Code §§ 2698, *et seq.*)**

7                                   **(By Plaintiff against all Defendants)**

8           82.     Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9           83.     Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of  
10 2004 ("PAGA") because he was employed by Defendants during the applicable statutory  
11 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.  
12 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf  
13 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by  
14 PAGA, plus reasonable attorney's fees and costs.

15          84.     During the applicable time period, Defendants violated California Labor Code  
16 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

17          85.     California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on  
18 behalf of themselves and other current or former employees, to bring a civil action to recover  
19 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

20          86.     Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the  
21 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'  
22 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,  
23 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following  
24 amounts:

25                   A.     For violations of California Labor Code § 204, one hundred dollars  
26 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars  
27 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
28 established by California Labor Code § 210).

1           B.     For violations of California Labor Code § 226(a), two hundred fifty  
2 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars  
3 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
4 established by California Labor Code § 226.3).

5           C.     For violations of California Labor Code §§ 510, 512, and 558.1, fifty  
6 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars  
7 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts  
8 established by California Labor Code § 558).

9           D.     For violations of California Labor Code § 1174, five hundred dollars  
10 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by  
11 California Labor Code § 1174.5).

12           E.     For violations of California Labor Code § 1197, one hundred dollars  
13 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two  
14 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,  
15 per pay period (regardless of whether the initial violations were intentionally committed)  
16 (penalty amounts established by California Labor Code § 1197.1).

17           F.     For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
18 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period  
19 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per  
20 pay period for each subsequent violation (penalty amounts established by California Labor  
21 Code § 2699(f)(2)).

22           87.     Plaintiff has complied with the procedures for bringing suit specified in  
23 California Labor Code § 2699.3. By letter dated July 21, 2023, Plaintiff filed written notice  
24 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice  
25 by certified mail to Defendants of the specific provisions of the California Labor Code alleged  
26 to have been violated, including the facts and theories to support the alleged violations. Plaintiff  
27 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to  
28 take action in response within 65 calendar days of the date of Plaintiff’s notice.

1           88. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved  
2 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in  
3 connection with their claims for civil penalties.

4                                   **NINTH CAUSE OF ACTION**

5                                   **AGE DISCRIMINATION IN VIOLATION OF THE FEHA**

6                                   **(Gov. Code § 12940(a))**

7                                   **(By Plaintiff against all Defendants except BRETT MATTA)**

8           89. Plaintiff incorporates by reference each and every paragraph of this Complaint  
9 as if fully alleged herein.

10          90. Plaintiff was and is at all times relevant hereto an employee covered by  
11 Government Code § 12926(c).

12          91. Defendants were at all times relevant hereto employers who employed five or  
13 more persons within the meaning of Government Code § 12926(d), and California  
14 Government Code §§ 12940, et seq., was in full force and effect and was binding on  
15 Defendants.

16          92. The Fair Employment and Housing Act prohibits an employer and its agents  
17 from discriminating against employees, on the basis of their age. Cal. Gov. Code § 12940(a).

18          93. Plaintiff was born in 1976 and was 47 years old when STADCO terminated his  
19 employment.

20          94. Throughout his employment tenure and at the time of his termination, Plaintiff  
21 performed his work with the utmost diligence and competence.

22          95. Defendants terminated Plaintiff on June 15, 2023 for the pretextual reasons that  
23 there was no more work for him.

24          96. In reality, Plaintiff's age and related seniority status in the company was a  
25 substantial motivating reason for Defendants' decision to terminate his employment. On  
26 information and belief, Defendants continued to employ the younger employees and Plaintiff  
27 was replaced by someone significantly younger than him.

28          97. As a proximate result of the wrongful acts of Defendants, Plaintiff has been

1 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,  
2 including without limitation, loss of salary and benefits, and the intangible loss of  
3 employment-related opportunities and damage to his professional reputation, all in an amount  
4 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with  
5 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other  
6 provision of law providing for prejudgment interest.

7 98. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered  
8 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and  
9 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue  
10 to experience said emotional suffering for a period in the future he cannot presently ascertain,  
11 all in an amount subject to proof at the time of trial.

12 99. The acts taken toward Plaintiff were carried out by and/or ratified by  
13 Defendants and/or managing agent employees of Defendants acting in a despicable,  
14 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to  
15 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum  
16 appropriate to punish and make an example of Defendants.

17 100. FEHA provides for an award of reasonable attorneys' fees and costs incurred  
18 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and  
19 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has  
20 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an  
21 award of attorneys' fees and costs.

22 **TENTH CAUSE OF ACTION**

23 **DISABILITY DISCRIMINATION**

24 **(Gov. Code, §§ 12926(m), 12940(a))**

25 **(By Plaintiff against all Defendants except BRETT MATTA)**

26 101. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

27 102. Defendants and DOES 1 to 25, inclusive, are covered employers under  
28 California's Fair Employment and Housing Act ("FEHA").

1           103. According to Government Code section 12940(a), it is an unlawful employment  
2 practice for an employer to discharge a person from employment because of a physical  
3 disability. (*Id.* § 12926(m)).

4           104. At all times, Plaintiff performed his work with the utmost diligence and  
5 competence and he never engaged in misconduct. Defendants had no complaints about  
6 Plaintiff's work performance or behavior.

7           105. Plaintiff's heart condition, which was debilitating, and which limited a major  
8 life activity, qualifies as a disability under FEHA, and Plaintiff was entitled to its protection.

9           106. Defendants knew of Plaintiff's disability and violated California Government  
10 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his physical  
11 disability, by not providing him with work, and ultimately terminating Plaintiff's employment  
12 because of his physical disability. Such discrimination constituted unlawful discrimination in  
13 violation of California Government Code sections 12926(m) and 12940(a).

14           107. As a proximate result of the conduct of the Defendants, Plaintiff has suffered  
15 and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other  
16 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer  
17 physical and emotional injuries, including nervousness, humiliation, depression, anguish,  
18 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's  
19 damages will be ascertained at trial.

20           108. In committing the foregoing acts, Defendants have been guilty of oppression,  
21 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to  
22 punitive damages in a sum appropriate to punish and make an example out of the foregoing  
23 Defendants.

24           109. The acts of oppression, fraud, and/or malice, were engaged in by employees of  
25 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each  
26 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the  
27 wrongful conduct for which an award of punitive damages is sought, and/or was personally  
28 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,

1 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on  
2 part of an officer, director, or managing agent of each of the Defendants, thereby entitling  
3 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with  
4 California Civil Code section 3294 in a sum appropriate to punish and make an example of  
5 each Defendant.

6 110. FEHA provides for an award of reasonable attorneys' fees and costs incurred by  
7 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will  
8 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has  
9 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an  
10 award of attorneys' fees and costs.

#### 11 **ELEVENTH CAUSE OF ACTION**

#### 12 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

13 **(Gov. Code, §12940(n))**

14 **(By Plaintiff against all Defendants except BRETT MATTA)**

15 111. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

16 112. Defendants and DOES 1 to 25, inclusive, are covered employers under  
17 California's Fair Employment and Housing Act ("FEHA").

18 113. At all relevant times, Plaintiff was an employee of Defendants with a physical  
19 disability – a heart condition – which is a disability that is protected under FEHA.

20 114. Under California Government Code section 12940(n), the employer must engage  
21 in a timely, good faith interactive process in response to a request for reasonable  
22 accommodation by an employee with a known physical or mental disability or known medical  
23 condition. The employer must initiate this process if the employee's disability is known or  
24 apparent by making known to the employee other suitable job opportunities. Absent evidence of  
25 undue hardship to the employer, the employer should give preference to the employee's  
26 requested accommodation during this process.

27 115. As set forth in the allegations above, Defendants, and each of them, were aware  
28 of Plaintiff's disability and failed to engage in the interactive process with Plaintiff to determine

1 effective reasonable accommodations as required by California Government Code section  
2 12940(n) and 12926.1(e).

3 116. Had Defendants, and each of them, engaged in a timely good faith interactive  
4 process, there were reasonable accommodations that would have accommodated Plaintiff's  
5 disability.

6 117. As a direct and proximate result of the conduct of Defendants, and each of them,  
7 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, benefits, and  
8 additional amounts of money Plaintiff would have received if Plaintiff had been afforded a good  
9 faith interactive process. As a result, Plaintiff has suffered such damages in an amount  
10 according to proof.

11 118. As a further direct and proximate result of the conduct of Defendants, and each  
12 of them, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of  
13 employment-related opportunities. As a result, Plaintiff has suffered such damages in an amount  
14 according to proof.

15 119. As a further direct and proximate result of the conduct of Defendants, and each  
16 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish,  
17 and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has  
18 suffered such damages in an amount according to proof.

19 120. The above-recited actions of Defendants, and each of them, were done with  
20 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights under the FEHA.  
21 Accordingly, Plaintiff is entitled to an award of punitive damages.

22 **TWELFTH CAUSE OF ACTION**

23 **FAILURE TO ACCOMMODATE DISABILITY**

24 **(Gov. Code, § 12940(m))**

25 **(By Plaintiff against all Defendants except BRETT MATTA)**

26 121. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

27 122. Defendants and DOES 1 to 25, inclusive, are covered employers under  
28 California's Fair Employment and Housing Act ("FEHA").

1           123. At all relevant times, Plaintiff was an employee of Defendants with a physical  
2 disability – a heart condition – which is a disability that is protected under FEHA.

3           124. California Government Code section 12940(m) makes it unlawful “[f]or an  
4 employer or other entity...to fail to make reasonable accommodation for the known physical or  
5 mental disability of an applicant or employee.”

6           125. As set forth above, Plaintiff informed Defendants of his heart condition, but  
7 rather than accommodating Plaintiff’s physical disability, Defendants did not provide any work  
8 assignments or opportunities for Plaintiff and terminated Plaintiff’s employment with  
9 Defendants.

10           126. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and  
11 will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other  
12 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical  
13 and emotional injuries, including nervousness, humiliation, depression, anguish,  
14 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff’s  
15 damages will be ascertained at trial.

16           127. In committing the foregoing acts, Defendants have been guilty of oppression,  
17 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to  
18 punitive damages in a sum appropriate to punish and make an example out of the foregoing  
19 Defendants.

20           128. The acts of oppression, fraud, and/or malice, were engaged in by employees of  
21 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each  
22 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the  
23 wrongful conduct for which an award of punitive damages is sought, and/or was personally  
24 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,  
25 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on  
26 part of an officer, director, or managing agent of each of the Defendants, thereby entitling  
27 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with  
28 California Civil Code section 3294 in a sum appropriate to punish and make an example of each

1 Defendant.

2 129. FEHA provides for an award of reasonable attorneys' fees and costs incurred by  
3 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will  
4 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has  
5 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an  
6 award of attorneys' fees and costs.

7 **THIRTEENTH CAUSE OF ACTION**  
8 **RETALIATION IN VIOLATION OF THE FEHA**  
9 **(Gov. Code, § 12940(h))**

10 **(By Plaintiff against all Defendants except BRETT MATTA)**

11 130. Plaintiff incorporates by reference each and every paragraph of this Complaint  
12 as if fully alleged herein.

13 131. Defendants and DOES 1 to 25, inclusive, are covered employers under  
14 California's Fair Employment and Housing Act ("FEHA").

15 132. At all relevant times, Plaintiff was an employee of Defendants with a physical  
16 disability – a heart condition – which is a disability that is protected under FEHA.

17 133. The California Fair Employment and Housing Act (FEHA), Government Code  
18 section 12900 et seq., provides that it is illegal for an employer to retaliate against an  
19 employee who has opposed any practices that violated the FEHA. (*Id.* § 12940(h).)

20 134. As alleged above, Plaintiff was retaliated against and terminated from his  
21 employment as a result of his physical disability and being forced to miss work as a result of  
22 his physical disability.

23 135. As a direct and proximate result of Defendants' conduct, Plaintiff has been  
24 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other  
25 things. As a result, Plaintiff has suffered such damages in an amount according to proof.

26 136. As a further direct and proximate result of the conduct of Defendants, and each  
27 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish  
28 and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has

1 suffered such damages in an amount according to proof.

2 137. The acts of oppression, fraud, and/or malice, were engaged in by employees of  
3 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each  
4 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the  
5 wrongful conduct for which an award of punitive damages is sought, and/or was personally  
6 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,  
7 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on  
8 part of an officer, director, or managing agent of each of the Defendants, thereby entitling  
9 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance  
10 with California Civil Code section 3294 in a sum appropriate to punish and make an example  
11 of each Defendant.

12 138. FEHA provides for an award of reasonable attorneys' fees and costs incurred  
13 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and  
14 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has  
15 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an  
16 award of attorneys' fees and costs.

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF THE FEHA**

19 **(Gov. Code, §§ 12940(k))**

20 **(By Plaintiff against all Defendants except BRETT MATTA)**

21 139. Plaintiff incorporates by reference each and every paragraph of this Complaint  
22 as if fully alleged herein.

23 140. Plaintiff was and is at all times relevant hereto an employee covered by  
24 Government Code § 12926(c).

25 141. Defendants were at all times relevant hereto employers who employed five or  
26 more persons within the meaning of Government Code § 12926(d), and California  
27 Government Code §§ 12940, et seq., was in full force and effect and was binding on  
28 Defendants.

1           142. The Fair Employment and Housing Act (“FEHA”) prohibits an employer to fail  
2 to take all reasonable steps necessary to prevent discrimination from occurring. Cal. Gov.  
3 Code §12940(k).

4           143. During the course of Plaintiff’s employment, Defendants failed to prevent their  
5 employees, including management, from engaging in intentional actions that resulted in  
6 Plaintiff being treated less favorably and eventually being terminated because of Plaintiff’s  
7 protected status (i.e. his age/ related seniority status in the company and his physical disability).  
8 During the course of Plaintiff’s employment, Defendants failed to prevent their employees  
9 from engaging in unjustified employment practices against employees in such protected  
10 classes. During the course of Plaintiff’s employment, Defendants failed to prevent a pattern and  
11 practice by its employees of intentional discrimination and retaliation on the basis of age/  
12 related seniority status in the company and physical disability, and/or other protected status  
13 and/or protected activity.

14           144. Defendants subjected Plaintiff to unlawful discrimination by terminating him  
15 based on his age/related seniority status and physical disability, in violation of Cal. Gov. Code  
16 § 12940(a).

17           145. As a proximate result of the wrongful acts of Defendants, Plaintiff has been  
18 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,  
19 including without limitation, loss of salary and benefits, and the intangible loss of  
20 employment-related opportunities and damage to his professional reputation, all in an amount  
21 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with  
22 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other  
23 provision of law providing for prejudgment interest.

24           146. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered  
25 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and  
26 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue  
27 to experience said emotional suffering for a period in the future he cannot presently ascertain,  
28 all in an amount subject to proof at the time of trial.

147. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants and/or managing agent employees of Defendants acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum appropriate to punish and make an example of Defendants.

## **FIFTEENTH CAUSE OF ACTION**

## WRONGFUL TERMINATION IN VIOLATION OF THE FEHA

**(Gov. Code § 12940(a))**

**(By Plaintiff against all Defendants except BRETT MATTA)**

148. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

149. At all times mentioned herein, the FEHA, Government Code section 12900 *et seq.*, was in full force and effect and binding upon Defendants and each of them.

150. Government Code section 12940(a) provides that it is an unlawful employment practice for an employer to discharge a person from employment because of age and/or a physical disability. *Id.*, Gov. Code, § 12926(m).

151. Under California Government Code section 12921, “The opportunity to seek, obtain, and hold employment without discrimination because of ... physical disability ...[and] age...is ... recognized as and declared to be a civil right.”

152. Defendants, and each of them, violated the FEHA when they terminated Plaintiff's employment due to his age/seniority status in the company and his physical disability and missing work due to his physical disability.

153. As a proximate result of the wrongful acts of Defendants, Plaintiff has been harmed in that Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment-related opportunities and damage to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other

1 provision of law providing for prejudgment interest.

2 154. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered  
3 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and  
4 emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue  
5 to experience said emotional suffering for a period in the future she cannot presently ascertain,  
6 all in an amount subject to proof at the time of trial.

7 155. The acts taken toward Plaintiff were carried out by and/or ratified by  
8 Defendants and/or managing agent employees of Defendants acting in a despicable,  
9 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to  
10 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum  
11 appropriate to punish and make an example of Defendants.

12 **SIXTEENTH CAUSE OF ACTION**

13 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

14 **(By Plaintiff against all Defendants except BRETT MATTA)**

15 156. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 157. Plaintiff was employed by Defendants.

17 158. At all times during his employment with Defendants, Plaintiff performed his  
18 duties with the utmost diligence and competence.

19 159. The state and federal statutes recited below embody fundamental, substantial,  
20 and well-established public policies of the United States and State of California. By terminating  
21 Plaintiff, Defendants violated these fundamental, substantial, and well-established public  
22 policies:

23 (A) At all times herein mentioned, the California Fair Employment & Housing Act  
24 (FEHA), Government Code Section 12900, was in full force and effect and binding upon  
25 defendants and each of them. It prohibits age and physical disability discrimination in all  
26 aspects of employment  
27 including hiring, termination and terms and conditions. Cal.Gov.Code § 12940(a).

28 (B) Under California Government Code Section 12921, the opportunity to seek, obtain

1 and hold employment without discrimination because of age and physical disability is  
2 recognized as and declared to be a civil right.

3 160. Plaintiff's employment was wrongfully terminated on or around June 15, 2023  
4 with respect to discriminating against an employee on account of his age/ related seniority  
5 status in the company and physical disability.

6 161. Moreover, Plaintiff was forced to hire an attorney to assist him to end these  
7 illegal activities.

8 162. As set forth above, said conduct violated the fundamental public policies of the  
9 State of California as reflected in its laws, objectives and policies. Said statutes and  
10 constitutional expressions of public policy include, but are not limited to, the FEHA, and the  
11 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at  
12 large, and not just the private interests of the employers and employees whom they govern or  
13 protect.

14 163. As a direct and proximate result of the aforementioned acts and omissions of  
15 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,  
16 loss of income (past and future), loss of employment benefits (past and future), general and  
17 compensatory damages (past and future), mental pain and anguish and emotional distress (past  
18 and future), and will continue to suffer in the future, in an amount to be proved at trial.

19 164. The foregoing conduct engaged in by Defendants and each of their directors,  
20 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,  
21 ratified, and carried on with a conscious and willful disregard of their workers' right to work in  
22 an environment free of discrimination, retaliation and labor code violations, so as to justify the  
23 imposition of punitive damages to punish and set an example of said Defendants.

24 **SEVENTEENTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

27 **(By Plaintiff against all Defendants except BRETT MATTA)**

28 165. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

1           166. At all relevant times during the applicable limitations period, Plaintiff has been  
2 an employee of Defendants and entitled to the benefits and protections of the Business and  
3 Professions Code §§ 17200, *et seq.*

4           167. Defendants engaged in unfair competition by failing to 1) pay employees for all  
5 hours worked at the correct rates of pay and 2) pay their employees premium wages for  
6 workdays during which one or more meal or rest periods were not provided, and 3) reimburse  
7 employees for necessary business expenses incurred in the course of performing their duties.

8           168. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
9 unfair competition within the meaning of California Business & Professions Code §§ 17200,  
10 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have  
11 unfairly gained a competitive advantage over other comparable companies doing business in  
12 California that comply with their legal obligations to, among other things, refrain from  
13 discriminatory practices and prevent discrimination, pay their employees premium wages for  
14 workdays in which they did not provide employees with one or more meal and rest periods,  
15 indemnify them for all business expenses incurred during the course of performing their  
16 duties, including, but not limited to, mobile phone expenses, and pay them all wages earned.

17           169. As a result of Defendants' unfair competition as alleged herein, Plaintiff has  
18 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all  
19 hours worked, failed to provide him with premium wages for missed meal and rest periods,  
20 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his  
21 duties.

22           170. Pursuant to California Business & Professions Code § 17203, Plaintiff is  
23 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him  
24 or otherwise retained by means of their unlawful and unfair business practices.

25           171. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair  
26 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial  
27 benefit doctrine and/or the common fund doctrine.

28           172. Accordingly, with respect to this cause of action, Plaintiff prays for the herein

1 stated relief, and an award of all reasonable costs and attorneys' fees, including interest  
2 thereon, as permitted by law, all in amounts subject to proof.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 5 1. For compensatory damages including lost past and future wages, commissions, and all  
6 other sums of money, including employment benefits, together with interest on said  
7 amounts, and any other economic injury to Plaintiff, according to proof;
- 8 2. For general damages according to proof;
- 9 3. For special and consequential damages to the extent allowed by law;
- 10 4. For punitive and exemplary damages against Defendant STADCO in an amount subject  
11 to proof;
- 12 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount  
13 subject to proof at trial;
- 14 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to  
15 7. proof at trial;
- 16 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours  
17 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 18 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major  
19 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 20 10. For maximum civil penalties available under the Labor Code and applicable Wage  
21 Order against Defendants as described more particularly in the Complaint;
- 22 11. For restitution and disgorgement for all unfair business practices by corporate  
23 Defendants against Plaintiff in an amount according to proof;
- 24 12. For an order enjoining corporate Defendants from further unfair and unlawful business  
25 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 26 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor  
27 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated  
28 damages, damages, penalties, and waiting time penalties according to proof to the

1 extent permitted by law;

2 14. For the imposition of civil penalties and/or statutory penalties;

3 15. For all interest as allowed by law;

4 16. For all costs and disbursements incurred in this suit;

5 17. Reasonable attorney's fees where available by law, including but not limited to,  
6 pursuant to, Labor Code section 2698 *et seq.*, the FEHA, Code of Civil Procedure  
7 section 1021.5, and/or other applicable laws; and

8 18. For such other and further relief as this Court may deem proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

11  
12 Dated: October 30, 2023

MM LAW, APC

13 By Maralle Messrelia  
14 Maralle Messrelia, Esq.  
15 Attorney for Plaintiff,  
16 ANDRES IBARRA  
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# **EXHIBIT 6**

**FREEMAN MATHIS & GARY, LLP**

Daniel Parker Jett (CA SBN 178070)

[DJett@fmglaw.com](mailto:DJett@fmglaw.com)

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Los Angeles, California 90071-2627

Ph: (213) 615-7000

Fax: (213) 615-7100

Attorneys for Defendants  
STADCO and BRETT MATTA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

ANDRES IBARRA, an individual,

Plaintiff,

v.

STADCO, a California corporation;  
BRETT MATTA, an individual; and  
DOES 1 through 25. inclusive,

Defendants.

Case No. 23STCV26591

[Assigned to Hon. Christopher K. Lui, Dept.  
76]

**DEFENDANTS STADCO AND BRETT  
MATTA’S ANSWER TO PLAINTIFF  
ANDRES IBARRA’S COMPLAINT FOR  
DAMAGES**

Complaint filed: October 30, 2023

Trial Date: Not set

**TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

Defendants STADCO and BRETT MATTA (“Defendants”), hereby respond to Plaintiff ANDRES IBARRA’s (“Plaintiff”) Complaint for Damages (“Complaint”), filed herein on or about October 30, 2023, denying and alleging as follows:

**GENERAL DENIAL**

Pursuant to Code of Civil Procedure section 431.30, subdivision (d), Defendants generally and specifically deny each and every allegation contained in Plaintiff’s Complaint, and each and every cause of action therein. Defendants further deny that Defendants engaged in any wrongful conduct or that Plaintiff has been damaged by Defendants in the sum alleged, or in any sum whatsoever, by reason of any act or omission or any other conduct of Defendants.

**AFFIRMATIVE DEFENSES**

Without admitting any facts alleged by Plaintiff, Defendants also plead the following separate and distinct affirmative defenses to Plaintiff's Complaint. In asserting these affirmative defenses, Defendants do not assume the burden of proof as to matter that, pursuant to applicable law, are Plaintiff's burden to prove. Defendants do not currently know all of the facts and circumstances to Plaintiff's claims. Therefore, Defendants reserve the right to amend its Answer should it later discover facts demonstrating the existence of additional affirmative defenses.

As to each cause of action pleaded against these answering defendants, Defendants believe that, after a reasonable opportunity for discovery and further investigation, there will likely be evidentiary support for the following separate affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Cause of Action)**

1. In answering Plaintiff's Complaint, and as to each and every cause of action alleged therein, Defendants allege the Complaint fails to state facts sufficient to constitute a cause of action against them.

**SECOND AFFIRMATIVE DEFENSE**

**(Valid and Enforceable Arbitration Agreement)**

2. Plaintiff and Stadco are parties to a valid, enforceable arbitration agreement, executed on or about April 30, 2014. Accordingly, Plaintiff has agreed to arbitrate nearly all his claims against Defendants as set forth in the Complaint. As such, Defendants allege that Plaintiff's Complaint, and each of the purported causes of action therein, is barred by his contractual agreement not to submit his Complaint to this forum, except for Plaintiff's Eighth Cause of Action seeking imposition of civil penalties under the Private Attorneys General Act of 2004 ("PAGA") [*Lab. Code*, §§ 2698, *et seq.*]. All other purported causes of action asserted in the Complaint must be submitted to binding arbitration.

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**THIRD AFFIRMATIVE DEFENSE**

**(Comparative Fault)**

3. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that Plaintiff was careless and/or negligent in and about the matters alleged in the Complaint, and said carelessness and/or negligence on part of Plaintiff proximately caused or contributed to the happening of his injuries, loss and/or damages, if any, alleged to have been sustained by Plaintiff.

**FOURTH AFFIRMATIVE DEFENSE**

**(After-Acquired Evidence Doctrine)**

4. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that Plaintiff's claims are barred due to the application of the After-Acquired Evidence Doctrine, or alternatively, the Doctrine of After-Acquired evidence limits and reduces Plaintiff's alleged damages.

**FIFTH AFFIRMATIVE DEFENSE**

**(Good Faith Reliance/Not Willful)**

5. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that any action taken with regard to Plaintiff was an act or omission made in good faith, and that in participation in such acts, Defendants had reasonable grounds for believing that the act or omission was not in violation of any applicable law.

**SIXTH AFFIRMATIVE DEFENSE**

**(Legitimate, Non-Discriminatory, Business Decisions)**

6. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that any and all actions taken concerning Plaintiff were taken for lawful, non-discriminatory, non-retaliatory, legitimate business reasons.

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**SEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

7. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that even if Plaintiff has suffered damages or injuries, all or some portion of said damages or injuries were caused or attributable to Plaintiff's failure to take reasonable action to mitigate said injuries or damages.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Administrative Remedies)**

8. In answering Plaintiff's Complaint, Defendants allege Plaintiff's Complaint is barred in whole or in part by Plaintiff's failure to exhaust administrative remedies.

**NINTH AFFIRMATIVE DEFENSE**

**(Waiver)**

9. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that by Plaintiff's conduct, Plaintiff waived any right to recover any relief pursuant to his Complaint, or any purported cause of action alleged therein, by her own conduct.

**TENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

10. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that Plaintiff is estopped by his conduct from recovering any relief pursuant to his Complaint, or any purported cause of action alleged therein.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Employment At-Will)**

11. As a separate and distinct affirmative defense, and while denying each and every allegation in the Complaint, Defendants allege that Plaintiff's Complaint, and each and every cause of action, are barred by Labor Code section 2922.

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**TWELFTH AFFIRMATIVE DEFENSE**

**(Workers Compensation Preemption)**

11. Plaintiff claim for damages and relief based on the cause of action for intentional infliction of emotional distress is barred to the extent they are preempted by the California Workers Compensation Act [*Lab. Code*, §§ 3200, *et seq.*], which is Plaintiff's exclusive remedy.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Consent)**

12. In answering Plaintiff's Complaint, Defendants are informed and believe that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, Plaintiff and the aggrieved employees he purports to represent, consent to any and/or all of the conduct which they now complain.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Conduct Outside Course and Scope)**

13. In answering Plaintiff's Complaint, Defendants allege Plaintiff's claims are barred because if Defendant's employees (including Plaintiff) took the actions alleged, such actions were committed outside the course and scope of such employees' employment, were not authorized, adopted or ratified by Defendants and/or Defendants did not know of nor should have known of such conduct.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Avoidable Consequences)**

14. In answering Plaintiff's Complaint, Defendants allege Plaintiff's claims are barred due to application of the avoidable consequences doctrine because Defendants had appropriate policies and procedures in place, which it implemented and communicated to employees and the use of Defendants' policies and procedures would have prevented some or all of the harm allegedly suffered by the employees.

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**SIXTEENTH AFFIRMATIVE DEFENSE**

**(No Knowing and Intentional Failure)**

15. In answering Plaintiff's Complaint, Defendants allege that, even assuming *arguendo*, Plaintiff and/or the purportedly aggrieved employees, were not provided with a proper itemized statement of wages and deductions, they are not entitled to recover damages or penalties because Defendants' alleged failure to comply with Labor Code section 226, subdivision (a), was not a "knowing and intentional failure" under Labor Code section 226, subdivision (e).

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Injury)**

16. In answering Plaintiff's Complaint, Defendants allege that, even assuming *arguendo*, Plaintiff and/or the purportedly aggrieved employees, were not provided with a proper itemized statement of wages and deductions, they are not entitled to recover damages or penalties because they did not suffer any injury as a result of any failure by Defendants to comply with Labor Code section 226, subdivision (a).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Bona Fide Dispute)**

17. In answering Plaintiff's Complaint, Defendants allege there is a *bona fide* dispute as to whether any further compensation is actually due to Plaintiff and, if so, the amount thereof.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Meal Period Compliance)**

18. In answering Plaintiff's Complaint, Defendants allege Plaintiff's and/or the purportedly aggrieved employees' claims are barred, in whole or in part, because Defendants permitted and authorized meal periods in compliance with California Law and did not impede, discourage, or prevent employees (including Plaintiff) from taking meal periods.

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**TWENTIETH AFFIRMATIVE DEFENSE**

**(Rest Period Compliance)**

19. In answering Plaintiff's Complaint, Defendants allege Plaintiff's and/or the purportedly aggrieved employees' claims are barred, in whole or in part, because Defendants permitted and authorized rest periods in compliance with California Law and did not impede, discourage, or prevent employees (including Plaintiff) from taking rest periods.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Wage Orders Unconstitutionally Vague)**

20. In answering Plaintiff's Complaint, Defendants allege the Complaint and each cause of action therein, or some of them, are barred because the applicable wage orders of the Industrial Welfare Commission are unconstitutionally vague and ambiguous and violate Defendants' rights under the United States Constitution and the California Constitution as to, among other things, due process of law.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Invalidity of Wage Orders)**

21. In answering Plaintiff's Complaint, Defendants allege the applicable wage orders are invalid for failure to comply with relevant portions of the Labor Code and because the orders, or pertinent portions thereof, are arbitrary and capricious.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Reasonable, Good Faith, and Business Necessity)**

22. In answering Plaintiff's Complaint, Defendants allege that they acted reasonably, in good faith, and in a manner consistent with the necessities of their business at all times material herein based on all relevant facts and circumstances known by them at the time it so acted.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Offset)**

23. In answering Plaintiff's Complaint, Defendants allege they are entitled under the equitable doctrine of setoff and recoupment to offset the extra payments or overpayments

1 and/or all obligations of Plaintiff owed to Defendants against any judgment entered against  
2 them.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Labor Code § 2699 – No Typicality)**

5 25. In answering Plaintiff’s Complaint, Defendants allege some or all of Plaintiff’s  
6 claims are barred because Plaintiff is not an adequate and proper representative of any group  
7 of allegedly “aggrieved employees” Plaintiff seeks to represent.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9 **(Labor Code § 2699 – Not Aggrieved Employees)**

10 26. In answering Plaintiff’s Complaint, Defendants allege Plaintiff lacks standing  
11 to bring claims for civil penalties on behalf of others because he is not an “aggrieved  
12 employee” pursuant to Labor Code section 2699.

13 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

14 **(No Statutory Violation)**

15 27. In answering Plaintiff’s Complaint, and as to each and every cause of action  
16 alleged therein, Defendants allege they acted in good faith and with reasonable grounds to  
17 believe its actions did not violate the California Labor Code or an Order of the Industrial  
18 Welfare Commission with regard to the treatment of Plaintiff.

19 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

20 **(Full Compliance)**

21 28. Defendants allege Plaintiff’s and/or the purportedly aggrieved employees’  
22 claims are barred, in whole or in part, because Defendants properly compensated all current  
23 and former employees under the Fair Labor Standards Act (FLSA), the California Labor Code,  
24 and/or the California Industrial Welfare Commission Wage Orders.

25 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

26 **(Additional Affirmative Defenses)**

27 30. In answering Plaintiff’s Complaint, and as to each and every cause of action  
28 alleged therein, Defendants presently have insufficient knowledge or information upon which

1 to form a belief as to whether they may have additional affirmative defenses available.  
2 Accordingly, Defendants reserve the right to assert additional defenses to the Complaint in  
3 the event that further discovery or inquiry indicates that they are appropriate.

4 **PRAYER**

5 WHEREFORE, Defendants prays as follows:

- 6 1. That Plaintiff takes nothing from Defendants by this Complaint, and that the  
7 Complaint be dismissed with prejudice;  
8 2. That judgment be entered in favor of Defendants and against Plaintiff;  
9 3. That Defendants be awarded costs of suit and reasonable attorney's fees  
10 incurred herein; and  
11 4. That Defendants be awarded such other and further relief as this Court deems  
12 just and proper.

13 DATED: January 18, 2024

**FREEMAN MATHIS & GARY, LLP**

14  
15 By: 

16 DANIEL PARKER JETT  
17 ELIZABETH M. POTTS  
18 Attorneys for Defendants  
19 STADCO and BRETT MATTA  
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**PROOF OF SERVICE**  
*Andres Ibarra v. Stadco; et al.*  
L.A.S.C. Case No. 23STCV26591

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 550 South Hope Street, 22<sup>nd</sup> Floor, Los Angeles, CA 90071 and my electronic service address is [Jodie.Alamillo@fmglaw.com](mailto:Jodie.Alamillo@fmglaw.com).

On January 18, 2024, I served the following document(s) described as **DEFENDANTS STADCO AND BRETT MATTA'S ANSWER TO PLAINTIFF ANDRES IBARRA'S COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

|                                                                                                     |                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Maralle Messrelan, Esq.<br><b>MM LAW, APC</b><br>500 N. Central Ave., Ste 840<br>Glendale, CA 91203 | Attorney for: <i>Plaintiff</i> ANDRES IBARRA<br><br>Telephone: 818-810-7747<br>Facsimile: 818-230-9018<br>Email: <a href="mailto:maralle@mmlawapc.com">maralle@mmlawapc.com</a> |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

☐ **BY MAIL:** By placing a true copy thereof in a sealed envelope addressed as above and placing it for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence, pleadings, and other matters for mailing with the United States Postal service on that same day with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to \_\_\_\_ for delivery to the addressee(s).

☒ **BY E-MAIL:** I transmitted a copy of the foregoing document(s) via e-mail to the addressee(s).

☐ **BY ELECTRONIC SERVICE:** by transmitting a copy of the foregoing document(s) via internet/electronic mail to File & ServeXpress (formerly LEXIS/NEXIS) for service on all parties in this case via their e-mail addresses, pursuant to court order, which includes the following plaintiff's counsel:

☐ **BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the offices of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 18, 2024, at Los Angeles, California.

*Jodie Alamillo*  
\_\_\_\_\_  
Jodie Alamillo

# **EXHIBIT 7**

**Andres Ibarra v. STADCO, et al.**

**Superior Court of California, Los Angeles, Case No. 23STCV26591**

| <b>MM Law, APC: Costs and Expenses</b>                     | <b>Total</b>       |
|------------------------------------------------------------|--------------------|
| LWDA Notice Filing Fee                                     | \$ 75.00           |
| Complaint Filing                                           | \$ 454.22          |
| Court Filing Costs (NAR, Address Change, NOS, RFD(partial) | \$ 29.04           |
| Mediator Fees                                              | \$ 7,500.00        |
| Data Analyst for Mediation                                 | \$ 1,200.00        |
| Postage                                                    | \$ 28.26           |
| PAGA Motion filling fee (estimated)                        | 68.91              |
| <b>Current and Estimated Costs through 09/16/2024</b>      | <b>\$ 9,355.43</b> |

# **EXHIBIT 8**



**June 27, 2024**

### CASE ASSUMPTIONS

|                       |                   |
|-----------------------|-------------------|
| Class Members         | 92                |
| Opt Out Rate          | N/A               |
| Opt Outs Received     |                   |
| Total Class Claimants | 92                |
| Subtotal Admin Only   | <b>\$3,383.48</b> |

**Flat Fee Total \$3,383.48**

**For 92 Class Members**

**Pricing Good for Scope of Estimate Only**

**All Aspects of Escheating to the State of CA Included**

### **Case: Ibarra v. Stadco, PAGA Administration**

**Phoenix Contact: Michael E. Moore**  
**Contact Number: 949.331.0131**  
**Email: mike@phoenixclassaction.com**

**Requesting Attorney: Maralle Messrelian**  
**Firm: MM Law, APC**  
**Contact Number: 818-810-7747**  
**Email: maralle@mmlawapc.com**

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.  
 Estimate is based on **92** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

### **Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)**

| <b>Administrative Tasks:</b> | <b>Rate</b> | <b>Hours/Units</b> | <b>Line Item</b> | <b>Estimate</b> |
|------------------------------|-------------|--------------------|------------------|-----------------|
| Programming Manager          | \$100.00    | 1                  |                  | \$100.00        |
| Programming Database & Setup | \$100.00    | 1                  |                  | \$100.00        |
| Toll Free Setup*             | \$100.00    | 1                  |                  | \$100.00        |
| Call Center & Long Distance  | \$2.50      | 13                 |                  | \$32.50         |
| NCOA (USPS)                  | \$20.00     | 1                  |                  | \$20.00         |
| <b>Total</b>                 |             |                    |                  | <b>\$352.50</b> |

\* Up to 120 days after disbursement

### **Data Merger & Scrub / PAGA Letter & Check / Postage**

| <b>Project Action</b>            | <b>Rate</b> | <b>Hours/Units</b> | <b>Line Item</b> | <b>Estimate</b> |
|----------------------------------|-------------|--------------------|------------------|-----------------|
| Notice Packet Formatting         | \$100.00    | 1                  |                  | \$100.00        |
| Data Merge & Duplication Scrub   | \$0.09      | 92                 |                  | \$8.28          |
| PAGA Letter and Check Packet     | \$1.00      | 92                 |                  | \$92.00         |
| Estimated Postage (up to 1 oz.)* | \$0.64      | 92                 |                  | \$58.88         |
| <b>Total</b>                     |             |                    |                  | <b>\$259.16</b> |

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## Skip Tracing & Remailing PAGA Packets / Tracking & Programming Undeliverables

| Project Action:             | Rate    | Hours/Units | Line Item    | Estimate        |
|-----------------------------|---------|-------------|--------------|-----------------|
| Case Associate              | \$55.00 | 2           |              | \$110.00        |
| Skip Tracing Undeliverables | \$0.75  | 16          |              | \$12.00         |
| Remail PAGA Packets         | \$1.00  | 13          |              | \$13.00         |
| Estimated Postage           | \$0.64  | 13          |              | \$8.32          |
| Programming Undeliverables  | \$50.00 | 1           |              | \$50.00         |
|                             |         |             | <b>Total</b> | <b>\$193.32</b> |

## Case Management

| Project Action: | Rate    | Hours/Units | Line Item    | Estimate        |
|-----------------|---------|-------------|--------------|-----------------|
| Case Associate  | \$55.00 | 2           |              | \$110.00        |
| Case Manager    | \$85.00 | 2           |              | \$170.00        |
|                 |         |             | <b>Total</b> | <b>\$280.00</b> |

## Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

| Project Action:            | Rate     | Hours/Units | Line Item    | Estimate        |
|----------------------------|----------|-------------|--------------|-----------------|
| Programming Calculations   | \$135.00 | 1           |              | \$135.00        |
| Disbursement Review        | \$135.00 | 1           |              | \$135.00        |
| Programming Manager        | \$95.00  | 2           |              | \$190.00        |
| QSF Bank Account & EIN     | \$135.00 | 1           |              | \$135.00        |
| Check Run Setup & Printing | \$135.00 | 1           |              | \$135.00        |
|                            |          |             | <b>Total</b> | <b>\$730.00</b> |

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



| <b>Tax Reporting &amp; Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations</b> |             |                    |                           |
|---------------------------------------------------------------------------------------------------------|-------------|--------------------|---------------------------|
| <b>Project Action:</b>                                                                                  | <b>Rate</b> | <b>Hours/Units</b> | <b>Line Item Estimate</b> |
| Case Supervisor                                                                                         | \$115.00    | 1                  | \$115.00                  |
| Remail Undeliverable Checks<br>(Postage Included)                                                       | \$1.50      | 9                  | \$13.50                   |
| Case Associate                                                                                          | \$55.00     | 1                  | \$55.00                   |
| Reconcile Uncashed Checks                                                                               | \$85.00     | 2                  | \$170.00                  |
| Conclusion Reports                                                                                      | \$115.00    | 1                  | \$115.00                  |
| Case Manager Conclusion                                                                                 | \$85.00     | 2                  | \$170.00                  |
| Final Reporting & Declarations                                                                          | \$115.00    | 2                  | \$230.00                  |
| QSF Annual Tax Reporting *                                                                              | \$700.00    | 1                  | \$700.00                  |
| (State Tax Reporting & Escheating Uncashed<br>Checks to the State of CA included)                       |             |                    |                           |
|                                                                                                         |             | <b>Total</b>       | <b>\$1,568.50</b>         |

\* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

**Estimate Total: \$3,383.48**



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## **TERMS AND CONDITIONS**

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### **Tax Reporting Requirements**

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

# **EXHIBIT 9**