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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SAN BERNARDINO**
17

18 LOUIS NORIEGA and THERESA MOORE,
19 individuals, on behalf of themselves and on
behalf of all persons similarly situated,

20
21 Plaintiffs,

22 vs.

23 QVC, INC., a Corporation; and DOES 1
24 through 50, inclusive,

Case No.: CIVSB2319032

Assigned for all Purposes to:
Hon. Jessica Morgan
Dept. S-26

DECLARATION OF SEPIDEH ARDESTANI
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

Date: December 13, 2024
Time: 8:30 a.m.
Dept.: S-26

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1. I am an attorney duly licensed to practice in California and before this Court, and I am associated with Crosner Legal, PC, counsel of record for plaintiff Theresa Moore. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. If called to testify as to the within facts, I would and could competently do so.

2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' Class Action and PAGA Settlement Agreement and Class Notice (the "Agreement"). Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff Moore's PAGA Notice letter and proof of submission to the Labor & Workforce Development Agency ("LWDA"). Attached hereto as Exhibit 3 is a true and correct copy of the LWDA's acknowledgment of receipt of the proposed settlement via its online portal.

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

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4. Defendant QVC is a retail distribution company that sells products from home and fashion to beauty, electronics and jewelry. Defendant claims to reach more than 200 million homes worldwide via its 12 broadcast networks and reaches millions more via multiple streaming services, websites, mobile apps and social pages. QVC maintains and warehousing and distribution center in Ontario, California. Plaintiff worked for Defendant as a Fulfillment Center Team Member in Ontario from September 15, 2022 to December 14, 2022. Plaintiff was employed as a non-exempt employee, paid at a base hourly rate of \$15.50/hr. Plaintiff earned an additional \$1.00 per hour when he worked the night shift, which was the shift he primarily worked. Plaintiff Moore worked in the Ontario, CA facility as a Fulfillment Center Team Member from October 2021 to May 2023.

5. Plaintiffs assert multiple wage and hour claims against Defendant. First, Plaintiffs contend they and the class members had to work “off the clock” because (a) they had to wait in long lines to clock in/out for the shifts and their meal breaks, all while subject to employer control

1 and (b) depending on where they were working in the enormous warehouse, employees could need
2 several minutes to get to/from their work station to the break area which time was counted against
3 their meal break time. Additionally, at the end of a shift class members allegedly were not allowed
4 to clock out at the lobby of the building but instead had to clock out time clocks located deep in
5 the warehouse and then spend several minutes walking across the warehouse floor and exit the
6 building. Plaintiffs allege that if an employee used the lobby time clocks they would written up
7 and disciplined.

8 6. Plaintiffs also contend they did not receive all required meal and rest breaks, or did
9 not receive them on a compliant basis, and never received an extra hour of premium pay in lieu of
10 a missed or non-compliant break. For the reasons addressed above, Plaintiffs allege QVC's time
11 keeping policies caused these break violations as class members lost break time waiting in the
12 time clock line or traversing the warehouse to the break area and accordingly did not receive fully-
13 compliant meal and rest breaks. Finally, Plaintiffs allege class members had to use their personal
14 cell phones for work purposes such as communicating with each other and with supervisors.

15 7. Based on these allegations, on August 9, 2023, after notice to QVC and the LWDA
16 and exhausting his administrative remedies, Plaintiff Noriega filed a PAGA-only representative
17 complaint in this Court seeking civil penalties against Defendant for several alleged violations of
18 the Labor Code and IWC Wage Orders. After likewise exhausting her administrative remedies, on
19 November 3, 2023, Plaintiff Moore also filed a PAGA-only complaint in this Court alleging
20 substantially similar Labor Code violations by Defendant. Plaintiffs asserted their PAGA claims
21 on behalf of individuals who worked for Defendant as non-exempt employees in California during
22 the relevant time frame (*i.e.*, between August 9, 2022 and present).

23 8. QVC has at all times denied Plaintiffs' collective allegations and maintained its
24 meal break and payroll policies and procedures comply with California law, that it provided the
25 class members with required meal and rest breaks, and that it paid Plaintiffs and the class members
26 all wages due and for all hours worked. Additionally, QVC strongly contends the case cannot be
27 maintained as any kind of class or representative action, arguing that to the extent class members
28 missed breaks, that such breaks were non-compliant, or that employees worked "off the clock,"

1 such conduct was against company policy, and intermittent or infrequent. QVC further contends
2 that evidence of such alleged violations would be purely anecdotal. Thus, per QVC individual
3 issues predominate and trial would be unmanageable.

4 9. Once Plaintiffs filed their respective complaints, the Parties engaged in meet and
5 confer discussions regarding potential discovery issues, potential law and motion matters, and the
6 merits of the cases, and ultimately agreed to attempt early mediation. They then engaged in
7 significant informal discovery to facilitate an exchange of information necessary to engage in a
8 meaningful mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel
9 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and
10 time records produced by QVC for about 30% of the class members. Defendant also provided
11 documents and information reflecting the estimated total number of workweeks and pay periods
12 employees worked, employees' average hourly pay rates, and other relevant data.

13 10. The Parties then engaged David Rotman, Esq., a respected mediator with extensive
14 wage and hour class action experience and, in May 2024, participated in a full day mediation with
15 Mr. Rotman. Throughout the day, the arms-length negotiations were hard-fought and adversarial
16 as the Parties exchanged extensive information on their legal and factual positions, and made
17 numerous offers and counter-offers. Near the end of the day, the Parties reached agreement on all
18 major issues.

19 11. In addition to settling the pending PAGA claims, with Mr. Rotman's assistance the
20 Parties also agreed to resolve Plaintiffs' claims on a class-wide basis. Following the mediation,
21 the Parties collaboratively drafted the Class Action and PAGA Settlement Agreement
22 ("Agreement") setting forth the full and final settlement terms. Finally, Plaintiffs also filed a First
23 Amended Complaint in the Noriega matter that added Ms. Moore as a party-plaintiff and further
24 added class allegations consistent with claims alleged in the two initial complaints and related
25 PAGA notice letters.

26 **PROPOSED SETTLEMENT TERMS**

27 12. Under the settlement, QVC will pay \$1,500,000.00 into a common fund, the Gross
28 Settlement Amount or GSA. Attorney's fees of up to one-third of the GSA (\$500,000), litigation

1 costs of up to \$33,000, service awards of \$10,000 for the plaintiffs (*i.e.*, \$20,000 total), settlement
2 administration costs of no more than \$18,000, and \$100,000 for alleged PAGA civil penalties, all
3 will be paid from the Gross Settlement Amount. The remainder of approximately \$829,000 (“Net
4 Settlement Amount”) will be allocated among the Participating Class Members based on their total
5 weeks worked during the Class Period. No portion of the GSA will revert to QVC.

6 13. The settlement provides for conditional certification of a settlement class
7 comprised of all individuals who worked for QVC as a non-exempt employee in California during
8 the Class Period, which runs from March 16, 2017 through January 31, 2022. The Class, as of
9 October 2020, consisted of approximately 295 individuals.

10 14. As noted, the settlement obligates QVC to pay \$1,500,000 to resolve the Class’
11 claims, inclusive of attorney’s fees and costs. Approximately \$829,000 from the GSA will be
12 distributed to the Participating Class Members. This is a cash settlement that does not require
13 Participating Class Members to submit a claim form to receive their settlement share.
14 Participating Class Members will receive their settlement checks automatically via First Class
15 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
16 eighty percent will be allocated to expense reimbursement, penalties and interest. QVC will pay
17 any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject
18 to the Court’s approval, any amounts not claimed (because a class member does not cash his or her
19 settlement check), plus interest, will be forwarded to the California State Controller’s Unclaimed
20 Property Fund.

21 15. Each Participating Class Member will receive a share of the Net Settlement
22 Amount based on his or her total weeks worked for QVC in California during the Class Period
23 while employed in a non-exempt position. Thus, each Class Member’s Individual Settlement
24 Share will be calculated using criteria typically used in determining appropriate amounts of
25 allegedly unpaid wages, unpaid premium wages for missed meal breaks, and potential statutory
26 penalties under applicable law. These methods are intended to ensure each Class Member receives
27 a portion of the available settlement funds corresponding to the relative value of his or her
28 potential claims. The proposed allocation provides a reasonable way to compensate Class

1 Members based on the amount of time they worked for QVC and the number of instances they
2 may allege that they missed a meal break, were not provided compensation in lieu of such missed
3 breaks, or lost wages due to the alleged off the clock work, etc. I estimate the average class award
4 will be approximately \$467.

5 16. Subject to the Court's approval, the Parties have agreed to the appointment of
6 Simpluris, Inc. ("Simpluris") as Administrator. Simpluris is qualified and has significant
7 experience administering class action settlements, including numerous wage and hour matters.
8 Simpluris has agreed to cap its fees and costs at \$18,000.00. If the Court approves less than the
9 above amount, the difference will remain in the Net Settlement Amount for distribution to the
10 Participating Class Members.

11 17. The proposed Class Notice (Exhibit A to the Agreement) sets out information about
12 this case and explains the basic settlement terms in plain language. The Class Notice will also set
13 forth individualized information used to calculate each Class Members' Individual Settlement
14 Shares and each Class Member's estimated settlement award. The Class Notice likewise details
15 the procedures for Class Members to dispute their individual information, the procedure for
16 submitting an objection to the Settlement, and the procedure to request exclusion from the
17 Settlement. In sum, the Class Notice provides the Class Members with the information necessary
18 to evaluate the Settlement and provides a fair opportunity for Class Members to choose to
19 participate in, opt out of, or object to the proposed Settlement. Coupled with the notice procedure,
20 the proposed Class Notice provides the Class with the best notice practicable.

21 18. Class Members will have 60 days to dispute the information in their Notice used to
22 calculate their settlement award or to request exclusion. (Agreement at ¶ 1.42.) In the event a
23 Class Member disputes their individual information, the Administrator will review the Class
24 Member's records as well as any additional information submitted for purposes of making a final
25 determination.

26 19. All Participating Class Members will be deemed to release defendant QVC from all
27 claims alleged in the operative complaint, or that could have been brought based on the allegations
28 in the operative complaint, including PAGA claims, during the Class and PAGA Periods.

1 (Agreement at ¶¶ 6.2, 6.3.) The release is limited to the claims that were actually pleaded or could
2 have been pleaded based on the alleged facts in the operative complaint.

3 20. The settlement provides Defendant will not oppose a request for attorney's fees not
4 to exceed one-third of the GSA, or \$500,000, nor will it oppose a request for reimbursement of
5 litigation costs and expenses of up to \$33,000.00. Defendant also will not oppose a request for
6 service awards to Plaintiffs of not more than \$10,000 each in recognition of their time spent on
7 this matter, the risks they undertook on behalf of the class, and the benefit conferred to the class.
8 Plaintiffs have submitted their declarations herewith, and Plaintiffs' counsel will provide the Court
9 with appropriate summaries and evidence of their efforts and time records in anticipation of the
10 Final Approval Hearing. If the Court approves less than the above amounts, the difference will
11 remain in the Net Settlement Amount for distribution to the Participating Class Members.

12 21. As noted, the Parties allocated \$100,000 from the GSA to resolution of Plaintiffs'
13 claims under PAGA, and submit that amount is fair, reasonable and adequate, and consistent with
14 PAGA's underlying purposes. Per Labor Code section 2699(l)(2), my office gave notice of the
15 settlement and the approval hearing to the LWDA via its online portal.

16 **The Proposed Class Should Be Conditionally Certified**

17 22. The class is both sufficiently numerous, consisting of approximately 1,775
18 individuals, and ascertainable by reference to Defendant's personnel and payroll records.

19 23. Plaintiffs are adequate class representatives, as their claims do not conflict with and
20 are not antagonistic to the claims of other class members. Further, their claims are typical given
21 both are members of the class and their claims arise from the same employment practices and
22 course of conduct giving rise to the claims of the other class members.

23 24. Common questions of law and fact predominate – particularly for purposes of a
24 settlement class – as the Class Members all were subject to the same break policy, or lack thereof,
25 and likewise were subject to same alleged failure to accurately record and pay for all hours
26 worked. Since the focus of the claims against QVC concerns the legality of common policies
27 applied uniformly to the entire class, common issues predominate over individualized inquiries
28 concerning liability. Whether certain company-wide QVC policies resulted in off the clock work,

1 or caused break violations, are questions that Plaintiffs allege are common to all class members.
2 Regardless of the outcome, determining these questions will decide liability for all class members
3 one way or another.

4 25. Lastly, a class action is superior to other means for the fair and efficient
5 adjudication of this controversy.

6 **The Proposed Settlement Meets the *Dunk* and *Kullar* Factors and is within the Range of**
7 **Reasonableness**

8 26. Prior to settlement, the parties engaged in extensive informal discovery to facilitate
9 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding QVC's
10 payroll practices, pay stubs and time records for a sampling of class members, meal and rest break
11 policies, etc., and information from Defendant regarding class size and breakdown, work weeks,
12 rates of pay, and other information used to formulate a damages model. Plaintiffs then had that
13 information reviewed with the assistance of consulting experts at Berger Consulting Group to help
14 evaluate meal and rest break violations rates, and the amount of potential off the clock work, and
15 formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information
16 to enable them to understand the law and facts of this case and make an informed decision regarding
17 the proposed settlement and whether it is in the best interests of the class.

18 27. Using that data, Plaintiffs ran various calculations and estimated QVC's likely
19 maximum exposure on the class claims at approximately \$9,439,132, which consists of \$140,578
20 for unpaid wages due to the alleged miscalculation of the regular rate, \$858,847 on the unpaid
21 wage/off the clock claims, \$15,103 on the meal break claims (after deduction of meal period
22 premiums already paid), \$86,726 on the rest break claims, and \$143,030 on the expense
23 reimbursement claims. In addition, as to derivative statutory penalties, Plaintiffs calculated the
24 maximum value of the wage statement claims to be \$4,725,650 and \$3,469,198 for the waiting
25 time penalty claims. Plaintiffs' counsel substantially discounted the value of these claims,
26 however, in light of the multiple and considerable risks posed by proceeding with the litigation.

27 28. We calculated these amounts as follows:

28 **Unpaid Wages/Off the Clock**

1 450,320 shifts *5 min per shift off the clock = 37,527 hours. Alleged Off-the-Clock hours are
2 calculated at the base rate of pay (\$20.72) with 21.4% at the overtime rate, which equals
3 \$858,847.

4 **Regular Rate Violations**

5 There were various shift differential payments such as shift differentials and peak season
6 payments. Using the weighted average rates between all the regular/overtime/double time along
7 with the shift differential payments (includes shift diff for overtime/doubletime) results in 17.8%
8 of pay periods underpaid across 54.5% of employees. Using the same shift differentials, 1.9% of
9 pay periods had meal premiums underpaid (for 6.3% of employees). There were also sick pay
10 underpayments in 6.8% of pay periods across 34.1% of employees. The resulting calculation was
11 alleged underpayments of \$140,578 for unpaid wages due to the allege miscalculation of the
12 regular rate

13 **Meal Break Violations**

14 407,600 eligible shifts * 1% violation rate * \$20.72/hour avg. wage = \$83,799. However, from
15 that amount we deducted \$68,696 for meal premiums paid by Defendant, resulting in damages of
16 \$15,103 for the meal break claims.

17 **Rest Break Violations**

18 418,900 eligible shifts * 1% violation rate * \$20.72/hour avg. wage = \$86,726

19 **Expense Reimbursement**

20 28,606 months *\$5/month reimbursement =\$143,030

21 **Wage Statement Violations**

22 Wage Statement Penalties are calculated at \$50 for the initial violation and \$100 for each
23 subsequent violation with a maximum of \$4,000 per employee (assumes 100% violation),
24 resulting in alleged penalties of \$4,725,650.

25 **Waiting Time Penalties**

26 Waiting Time Penalties are calculated assuming 775 terminated employees x 7.2 hours per day x
27 30 days x the average rate of pay (\$20.72) = \$3,469,198
28

1 29. On the unpaid wage claims, Plaintiffs argued QVC's policies resulting in
2 substantial "off the clock" work that went uncompensated by Defendant. As noted above,
3 Plaintiffs allege class members lost several minutes of compensable time each shift by, inter alia,
4 having to wait in long lines to clock in and out, and losing time getting from their work stations to
5 the break room and/or time clocks due to the sheer size of the Ontario facility and QVC's unique
6 policies that allegedly could result in discipline for failure to timely clock in/out. With the
7 significant waiting time the employees faced plus the controlled walking time in the warehouse,
8 employees essentially were compelled to subject themselves to well more than 6 minutes per shift
9 congregating early and under Defendant's control in order to avoid punishment for a late clock in.

10 30. In response, Defendant took the position that its time keeping policies are legally
11 compliant, that it accurately tracked and paid for all hours worked consistent with those policies,
12 and that any work done "off the clock" was not sanctioned and done without QVC's knowledge.
13 Per QVC any time spent in line at the time stations or traveling through the warehouse was
14 accounted for, and Defendant compensated employees for their time walking between the entrance
15 and exit of the distribution centers and the time clocks. Per QVC, if any time went uncounted or
16 unpaid, it was both aberrational and against company policy, and a myriad of individualized
17 inquiries would be required to resolve the issue and accordingly class certification would be
18 inappropriate.

19 31. For the meal and rest break claims, Plaintiffs argued Defendant frequently provided
20 non-compliant meal breaks in several ways. Per Plaintiffs, the Class Members had to spend their
21 break time (1) traveling from the depths of Defendant's warehouse to the lobby where their
22 lunches were located (in refrigerators provided by Defendant), (2) submitting to loss inspections
23 off the clock before leaving the premises for a lunch, and (3) having to spend break time waiting
24 in line to clock in to return to work. Thus, Plaintiff alleged nearly all meal periods were impacted
25 by one or more of these factors and thus non-compliant.

26 32. In response, Defendant argued its break policies were fully compliant with
27 California law, and that it provided all required meal periods and thereby met its obligations under
28 the Labor Code and Wage Order. Defendant provides (and, at all relevant times, has provided)

1 employees with 45-minute meal periods, significantly reducing the number of “short” meal
2 periods (*i.e.*, meal periods less than 30 minutes in length). Further, Defendant argued it provided
3 employees with a net 30 minutes for their meal breaks and accounted for any time potentially
4 spent waiting in line to clock out or walking through the warehouse. QVC also noted that to the
5 extent employees missed a meal break or took a non-compliant break, any such discrepancies
6 were aberrational and against company policy and a myriad of individual issues would be required
7 to determine if the potential violation resulted from employee choice or some other reason.
8 Consequently, per the Defendant, individualized inquiries would dominate on this issue and
9 render class certification inappropriate. Defendant also argued it paid hundreds of break
10 premiums for facially non-compliant meal periods.

11 33. As with meal breaks, Defendant argued its rest break policies complied with
12 California law and authorized and permitted employees to take all required breaks and that all
13 breaks were at least a net 10 minutes. Defendant further contended that, in light of the fact that it
14 is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods
15 and/or discouragement from taking rest periods would be purely anecdotal and individual issues
16 would predominate on liability. Defendant also contends that it is only liable if Plaintiff can prove,
17 on a shift-by-shift basis, the aggrieved employees actually did not receive a fully compliant rest
18 break. This arguably would make a trial unmanageable since the number of instances an employee
19 missed a rest break would have to be tested on a case by case basis to determine if there was
20 compliance.

21 34. Plaintiffs’ based their expense reimbursement claim on the need to use their
22 personal mobile devices for company business, for which they were not reimbursed as required
23 under California law. On the other hand, Defendant argued there was no conceivable reason for Class
24 Members to use their own phones while on the clock and working, and thus any use of personal
25 phones was not necessary and not reimbursable.

26 35. Finally, Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged
27 inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims were
28 based on the “off the clock” unpaid wage claim and the overtime regular rate claims, and will rise

1 or fall along with that primary claim, in addition to being subject to “good faith” and other
2 defenses available to Defendant. Notably, the recent decision that good faith belief of compliance
3 by the employer in Naranjo v. Spectrum Sec. Servs., Inc., (2024) 15 Cal. 5th 1056, 1065, could
4 completely negate the claims for waiting time and wage statement penalties, even if wages were
5 owed to the Class. Accordingly, Plaintiffs discounted the derivative claims significantly in light
6 of these multiple potential defenses.

7 36. As far as potential PAGA liability, the theoretical penalties theoretically totaled
8 around \$5 million if PAGA penalties were assessed in the full amount of \$100 for every pay period,
9 and \$24 million should stacking penalties be permitted and Plaintiffs have prevailed on all claims
10 and established violations of the multiple Labor Code sections at issue for every single eligible pay
11 period. As with the class claims, Plaintiffs discounted the potential PAGA penalties for the multi-
12 layered defenses proffered by Defendant on the merits, and further discounted these claims since
13 the Court possesses wide discretion to reduce such penalties even if Plaintiffs ultimately prevailed.
14 Accordingly, the Parties allocated \$100,000 to PAGA penalties, which amount is reasonable and in
15 line with comparable settlements in other class actions in California. Additionally, the LWDA has
16 been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as
17 necessary.

18 37. The settlement obviates the significant risk that this Court may find any kind of
19 class or representative resolution unachievable or deny certification of all or some of Plaintiffs’
20 claims. Furthermore, even if Plaintiffs certify of all or some of the claims, continued litigation
21 would be lengthy and expensive as the parties pursued merits discovery, a probable motion to
22 decertify, as well as trial and possible appeals, and would substantially delay any recovery by the
23 class with no assurance of recovering significantly more than the proposed settlement. While
24 Plaintiffs are confident in the merits of their claims, legitimate controversies exist regarding
25 Plaintiffs’ claims. Plaintiffs also recognize proving the amount of wages and penalties due each
26 Class Member would be an expensive, time-consuming, and uncertain proposition.

27 38. Plaintiffs, co-counsel and I discounted the value of the class claims consistent with
28 the risks discussed above, and carefully weighed the likelihood of the class receiving substantially

1 greater benefit if the litigation continued. We concluded – in light of these very real and
2 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
3 was in the best interests of the class. The overall \$1,500,000 recovery represents a significant
4 percentage of Defendant’s potential exposure. Given the risks addressed above, a total recovery
5 for the class of \$1,500,000, which will result in average award of some \$467 per class member, is
6 a significant result well within the range of reasonableness considering all potential outcomes, and
7 it will provide direct monetary awards to all Class Members without further delay.

8 39. I obtained a Bachelors in Science Degree in Anthropology from the University of
9 California, Los Angeles. Prior to law school, I moved to Paris, France and worked as a translator
10 for a prestigious translation company where I translated business and legal documents from French
11 to English. After returning to the United States, I attended Whittier Law School and earned a Juris
12 Doctor in 2009 followed by an L.L.M. in 2010 from the Santa Clara University School of Law. I
13 have some fifteen years of experience as a practicing attorney, most of which have focused on
14 litigation of employment, labor law, consumer, and class action claims. Prior to joining Crosner
15 Legal in 2021, I worked as an associate attorney at Gaines & Gaines, APLC for ten years where I
16 gained extensive experience in wage and hour litigation and assisted in obtaining millions of
17 dollars for employees. Currently, over ninety percent (95%) of my practice is dedicated
18 exclusively to the prosecution of wage and hour class actions.

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

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

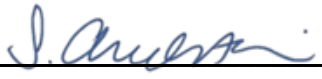
8 42. Mr. Crosner currently is an executive board member of the Wage and Hour
9 Committee and the Legislative Committee for the California Employment Lawyers Association;
10 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;
11 Wage and Hour Committee member and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

15 43. Jamie Serb is a partner with Crosner Legal and head of the firm’s Wage and Hour
16 practice group. She graduated from the University of California, San Diego in 2004, graduated from
17 California Western School of Law in 2013, and has been a member of the California Bar since 2013.
18 She gained extensive experience in wage and hour litigation, beginning work as a class action
19 attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley
20 Law Firm, APLC). She has handled wage and hour class actions and PAGA lawsuits for nearly ten
21 years and has assisted in obtaining millions of dollars for employees during her years of practice.

22 44. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class
23 action settlements while serving as lead class counsel in recent years, including but not limited to a
24 \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*,
25 Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement
26 in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento
27 Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean*
28 *Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and

1 hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American*
2 *Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action
3 settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a
4 \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation*
5 *Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and
6 hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-
7 YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v.*
8 *First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2
9 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et*
10 *al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour
11 settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No.
12 CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class action
13 settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super.
14 Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply*
15 *Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38 million wage and
16 hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No.
17 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action settlement
18 in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super.
19 Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism*
20 *Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million wage and
21 hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No.
22 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action settlement
23 in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a \$1.3
24 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No.
25 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class settlement
26 in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); and a
27 \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight*
28 *Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed on October 15, 2024, at Los Angeles, California.

3
4 
5 Declarant SEPIDEH ARDESTANI

EXHIBIT

1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Subject to Court approval, this Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Theresa Moore and Louis Noriega (“Plaintiffs”) and defendant QVC, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” means the plaintiff Theresa Moore’s lawsuit alleging wage and hour violations against Defendant captioned *Moore v. QVC, Inc.*, Case No. CIVSB2328448, initiated on November 3, 2023 and pending in Superior Court of the State of California, County of San Bernardino, and plaintiff Louis Noriega’s lawsuit alleging wage and hour violations against Defendant captioned *Noriega v. QVC, Inc.*, Case No. CIVSB2319032, initiated on August 9, 2023 and pending in the Superior Court of the State of California, County of San Bernardino.
- 1.2. “Administrator” means Simpluris, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who are or previously were employed by Defendant who were classified as non-exempt in the State of California at any time during the PAGA Period.
- 1.5. “Arbitration” means the individual private arbitration initiated by Plaintiff Theresa Moore against Defendant captioned, *Moore v. QVC, Inc.*, AAA Case No. 01-23-0004-4922.
- 1.6. “Class” means all individuals who are or previously were employed by Defendant in California who were classified as non-exempt in the State of California at any time during the Class Period.
- 1.7. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Zachary Crosner,

Jamie Serb, and Sepideh Ardestani of Crosner Legal, PC.

- 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.9. “Class Data” means each Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.
- 1.10. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.12. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.13. “Class Period” means the period of time from December 24, 2021 to the earlier of Preliminary Approval or August 22, 2024.
- 1.14. “Class Representatives” means the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment” means the service payment made to each of the Plaintiffs as Class Representatives in order to compensate them for initiating the Actions, performing work in support of the Actions, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by the Plaintiffs.
- 1.16. “Court” means the Superior Court of California, County of San Bernardino.

- 1.17. “Defendant” means QVC, Inc.
- 1.18. “Defense Counsel means Timothy L. Hix, Bailey K. Bifoss and Francesca L. Hunter of Seyfarth Shaw LLP.
- 1.19. “Effective Date” means the date on which the later of the following events has occurred: (a) the period for filing any appeal, writ, or other appellate proceeding opposing final approval of the settlement and judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) when any appeal, writ or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ or other appellate proceeding has upheld the Court’s Order Granting Final Approval and Judgment with no right to pursue further remedies or relief.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means One Million Five Hundred Thousand Dollars (\$1,500,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 1.23. “Individual Class Payment” means each Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.

- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period of time from March 15, 2022 to the earlier of Preliminary Approval or August 22, 2024.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means plaintiff Louis Noriega’s March 15, 2023 letter to Defendant and the LWDA and plaintiff Theresa Moore’s July 19, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means One Hundred Thousand Dollars (\$100,000.00), the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$25,000) and the 75% to LWDA (\$75,000) in settlement of PAGA claims.
- 1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.36. “Plaintiffs” means Theresa Moore and Louis Noriega, the named plaintiffs in the Actions.
- 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.

- 1.38. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.39. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.
- 1.40. “Released Parties” means: Defendant and its present and former affiliates including without limitation Qurate Retail Group, Inc. and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns, and any other person(s) acting by, through, under, or in concert with any of them.
- 1.41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. “Response Deadline” means sixty (60) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.44. “Workweek” means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day.

2. RECITALS

- 2.1. On August 9, 2023, plaintiff Louis Noriega filed a complaint against Defendant in the Superior Court of the State of California, County of San Bernardino (“Noriega Action”). Plaintiff Noriega’s complaint sought civil penalties pursuant to PAGA for alleged violations of the California Labor Code.
- 2.2. On November 3, 2024, plaintiff Theresa Moore filed a complaint against Defendant in the Superior Court of the State of California, County of San Bernardino (“Moore Action”). Plaintiff Moore’s complaint sought civil penalties pursuant to PAGA for alleged violations of the California Labor Code.
- 2.3. On May 13, 2024, the Parties participated in an all-day mediation presided over by David A. Rotman, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator’s proposal which was memorialized in

the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

- 2.4. Prior to mediation, Plaintiffs obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5. On September 16, 2024, the Parties filed a stipulation to file a First Amended Consolidated Complaint, which consolidated the claims in the Actions and added class action claims based on the factual allegations asserted in the Actions. The First Amended Consolidated Complaint is the operative complaint in the Actions (the "Operative Complaint").
- 2.6. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.7. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

3. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$1,500,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

- (a) To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed these amounts. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. An award of less than the requested amounts for Class Representatives' Service Payments will not give rise to a basis to abrogate the Settlement Agreement and, if the Court approves Class Representative Service Payments less than the amounts requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$500,000, and a Class Counsel Litigation Expenses Payment of not more than \$33,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, such award shall not give rise to a basis on which to abrogate the Settlement Agreement, and the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments. The payment of Class counsel Fees Payment shall be made as follows: 70% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 30% to Crosner Legal, PC. Payment of Class Counsel Litigation Expenses Payment shall be made to the firm that incurred the expenses.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$18,000 except for a showing of good cause and as approved by the Court. To the extent the

Administration Expenses Payment is less or the Court approves payment less than \$18,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$100,000 to be paid from the Gross Settlement Amount, with 75% (\$75,000) allocated to the LWDA PAGA Payment and 25% (\$25,000) allocated to the Individual PAGA Payments. Subject to Court approval, the PAGA Penalties will be allocated to cover any and all claims for civil penalties associated with the Released PAGA Claims that were or could have been brought in the Actions under PAGA based on the factual allegations in the Operative Complaint and PAGA Notice.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$25,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
 - ii. The Court has authority under this Agreement to increase or reduce the PAGA Penalties up to and including at the Final Approval stage. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. However, some approval of a PAGA Penalties payment is a material term of this Agreement. If the Court does not approve any PAGA Penalties without leave to amend, then the entire Agreement will be, at Defendant's sole discretion, void and unenforceable. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on

IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant has represented that the Class consists of 1,775 Class Members who collectively worked a total of 110,000 Workweeks, and 1,588 Aggrieved Employees who worked a total of 47,574 PAGA Pay Periods.
- 4.2. Class Data. Not later than 45 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage

prepaid. The face of each check shall prominently state the “void date”, which is 180 days after the date of mailing, when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients’ mailing addresses using the National Change of Address Database. If a Participating Class Member’s or Aggrieved Employee’s check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.

- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members beyond those specified in this Agreement. The Individual Class Payments and Individual PAGA Payments will not be used to calculate any additional benefits under any benefit plan to which any Class Member may be eligible, including but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Agreement will not affect any rights, contributions, or amounts to which any Class Member may be entitled under any benefit plan.

5.6. The Administrator will send checks for Individual PAGA Payments to all PAGA Members, who have no right to opt out or otherwise exclude themselves from the settlement and release of PAGA claims set forth in this Settlement.

6. RELEASE OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, 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 or ascertained during the Action; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice; and (c) any other claims, debts, liabilities, demands, damages, obligations, actions, and causes of action, of any nature whatsoever, whether known or unknown, suspected or unsuspected ("Plaintiffs' Release"). Plaintiffs' 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, or workers' compensation benefits that arose at any time. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

(a) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

(b) Moore's ADEA Waiver. As part of Plaintiffs' Release, Theresa Moore specifically waives claims for discrimination, harassment, or retaliation based on age (including under the Age Discrimination in Employment Act or "ADEA" claims). Moore agrees that she has 21 days to consider this Agreement after receiving it. She must sign and return this Agreement to Defendant during the review period if she wants to receive the payments and other consideration listed in this Agreement. Additionally, after signing this Agreement, Moore has seven (7) days to revoke this ADEA waiver by sending written notice of revocation to Bailey K. Bifoss, Seyfarth Shaw LLP, 560 Mission Street, 31st Floor, San Francisco, California 94105-2930; Facsimile: (415)

397-8549; Email: bbifoss@seyfarth.com. This Agreement is not effective or enforceable until this revocation period expires. If Moore revokes this Agreement, she will not receive the payments and other consideration listed herein.

- (c) Moore's Agreement to Dismiss Arbitration. Theresa Moore further agrees that, as a material inducement for Defendant to enter into this Agreement, all claims set forth in the Arbitration will be withdrawn with prejudice. Within 5 business days after (i) Moore signs this Agreement and (ii) any applicable revocation period, Moore agrees to file a Request for Dismissal of the Arbitration *with prejudice* and without an assessment of attorneys' fees or costs. Moore further agrees to take any other action that may be required to achieve a dismissal of the Arbitration.

6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal or state law that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint which occurred during the Class Period (the "Released Class Claims"). The Released Class Claims are claims based on the facts stated in the Operative Complaint or claims that reasonably could have been alleged based on the facts stated in the Operative Complaint and include but are not limited to all claims for rounding; failure to reimburse business expenses; failure to appropriately pay for all nonproductive time, rest, or recovery periods including failure to pay such time at the appropriate rate; failure to keep all accurate and required time and payroll records; failure to pay vested vacation and/or holiday pay and/or personal time off, including failure to pay such wages at the appropriate final rate of pay and failure to pay such wages timely; failure to produce payroll and/or personnel records; failure to provide suitable seating and/or resting facilities; failure to issue accurate wage statements; failure to provide meal periods, including without limitation missed, late, interrupted, and short meal periods, and failure to accurately record meal periods (including through rounding); failure to pay meal period premiums, including but not limited to failure to pay such premiums at the regular rate; failure to authorize and permit rest periods, including without limitation missed, late, interrupted, and short rest periods; failure to pay rest period premiums including failure to pay such premiums at the regular rate of pay; failure to pay minimum wage, including but not limited to failure to pay minimum wage for time spent performing off-the-clock work regarding pre- or post-shift work, health and/or other security screenings including screenings for COVID-19, off-the-clock work during meal periods, time spent in orientation or engaged in other administrative work, time spent traversing Defendant's property, and/or responding to work-related communications; failure to pay overtime, including failure to pay double-time, and failure to properly calculate and pay employees overtime and double-time at their regular rate of pay; failure to pay reporting time pay, including failure to pay reporting time pay at the appropriate regular rate of pay; claims

regarding sick leave and supplemental sick leave (“sick leave”), including failure to provide sick leave, failure to provide notice of sick leave rights, use and/or balance, and failure to pay sick leave at the appropriate rate of pay; failure to timely pay wages during employment; failure to timely pay wages at separation; requiring Participating Class Members to agree to unlawful conditions of employment, including non-compete, non-disclosure, non-solicitation agreements and/or unlawful PAGA waivers; unlawful inquiries into criminal or financial background checks; unlawful deductions; violation of California’s Day of Rest Law (i.e., failure to provide one day’s rest in seven); unfair and/or unlawful business practices; and willful refusal to pay wages. The Released Class Claims shall include all claims that were or reasonably could have been alleged based on the facts of the Operative Complaint under the California Labor Code, wage orders, and applicable regulations, regardless of theory of recovery, including claims for violations of Labor Code sections 201, 202, 203, 204, 210, 212, 216, 218, 218.5, 221, 226, 226.2, 226.7, 227.3, 233, 234, 245-248.5, 248.6, 256, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and 2802, as well as under Business & Professions Code section 17200 et seq., California Code of Regulations, title 8, section 11040, Civil Code 1786 et seq., and 15 U.S.C. 1681. The Released Class Claims also specifically include all PAGA Released Claims defined herein below. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

- 6.3. Release of PAGA Claims. All Aggrieved Employees, including but not limited to Plaintiffs, and the LWDA 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 any and all PAGA claims or causes of action of whatever kind or nature which occurred during the PAGA Period that were or reasonably could have been brought based on the facts alleged in the Operative Complaint regardless of theory of recovery (the “Released PAGA Claims”). The Released PAGA Claims include but are not limited to any alleged violations of or relief under California Labor Code as outlined above including failure to pay wages at the place of discharge or at another appropriate location pursuant to Labor Code section 208; failure to provide a safe and healthful workplace, including by properly notifying employees of an exposure to COVID-19; failure to provide written commission agreements; unlawful agreements (including agreements regarding confidentiality, forum selection, choice of law, non-compete, non-disclosure, non-solicitation, release/waiver, PAGA waivers); unlawful inquiries into criminal and/or financial histories; and claims for violation of California Labor Code Sections 208, 210, 212, 216, 222, 223, 225.5, 226.2, 226.3, 226.6, 432, 432.5, 432.7, 553, 1024.5, 2350, 2751, 2810.5, 6400-6404, 6406-6407, 6409.6, 6409.6, and 6432, and California Code of Regulations, title 8, sections 11040, 1527, 3366, 3457, and 8397.4. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker’s compensation, and claims outside of the PAGA Period.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s procedures and instructions.

7.1. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator.

7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected Simpluris to serve as the Administrator and verified that, as a condition of appointment, Simpluris 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 Administrator's duties will include preparing, printing, and mailing the Class Notice to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice; re-mailing Class Notices that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. 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.
- 8.4. Notice to Class Members.
- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- (c) Not later than 7 days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional

proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Paragraph 6.2 of the Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection,

Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

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

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to

Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. Class counsel shall also be provided with a copy of the Final Report except that the Administrator shall use anonymized employee identification numbers to identify payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE. Based on its records, Defendant provided figures as to the Class size as set forth in paragraph 4.1 above. If the actual number of Workweeks during the Class Period exceeds the estimate stated herein in paragraph 4.1 by more than 10% (*i.e.*, more than 121,000 workweeks), Defendant will have the option to increase the Gross Settlement Amount proportionately to account for the overage (*i.e.*, if the number of Workweeks in the Class Period exceeds Defendant’s estimate in paragraph 4.1 by 11%, Defendant shall increase the Gross Settlement Amount by 1%). In its sole and absolute discretion, Defendant may also choose to limit the Class Period such that the Class Period ends on the date when the Class Members have worked no more than 121,000 workweeks.

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Administration Expenses incurred as of the date Defendant makes this election to withdraw. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

11. MOTION FOR FINAL APPROVAL. Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 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.

11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment,

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

11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11.6. Effect of Settlement Not Being Final. In the event that the Settlement does not become Final then the Settlement Agreement shall become null and void, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and shall retain all rights to make all arguments regarding the merits of the claims and the appropriateness of the case for class and/or representative action treatment.

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

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. Defendant does not admit and specifically denies that it has violated any federal, state, or local law or engaged in any unlawful conduct with respect to its employees. The Parties agree that class and/or representative treatment is for purposes of this Settlement

only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest Plaintiffs' ability to pursue claims in the Complaint on a class or representative basis, Plaintiffs' ability to certify any class, and Defendant reserves all available defenses to the claims in the Action. Plaintiffs reserve the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2. Confidentiality. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that they shall not publicize this Settlement on their websites, in advertising/marketing materials or on social media, other than filing documents with the Court. The Parties and their Counsel agree that they will not issue any press releases or initiated any contact with the media about the fact, amount, or terms of the Settlement. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. If counsel for any Party receives an inquiry about the Settlement from the media, counsel may respond only after the motion for Preliminary Approval of the Settlement has been filed and only by confirming the accurate terms of the Settlement. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members. Nothing in this provision shall prevent Defendant from making any required disclosure.
- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points

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

- 13.7. 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.
- 13.8. Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13. 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.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement (“Confidential Information”), may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator’s obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Confidential Information and Class Data received from Defendant.

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

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

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

To Plaintiffs and the Class:

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Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
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To Defendant:

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Facsimile: (415) 397-8549
Email: bbifoss@seyfarth.com

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

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation on May 13, 2024 until the earlier of the Effective Date or the date this Agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Theresa Moore

Dated: 09/27/2024



Louis Noriega (Sep 27, 2024 14:08 PDT)

Plaintiff Louis Noriega

Dated: 10/11/2024

Shauna Burkes

Shauna Burkes [name]

For Defendant QVC, Inc.

Dated: 10/9/24

Kyle Nordrehaug

Kyle Nordrehaug

Blumenthal Nordrehaug Bhowmik De Blouw LLP

Attorney for Plaintiffs

Dated: _____

Zachary Crosner

Jamie Serb

Sepideh Ardestani

Crosner Legal, PC

Attorney for Plaintiffs

Dated: 10/11/2024

Bailey Bifoss

Bailey K. Bifoss

Seyfarth Shaw LLP

Attorney for Defendant

Telephone: (213) 270-9600
Facsimile: (213) 270-9601
Email: thix@seyfarth.com

Bailey K. Bifoss
Seyfarth Shaw LLP
560 Mission Street, 31st Floor
San Francisco, California 94105-2930
Telephone: (415) 397-2823
Facsimile: (415) 397-8549
Email: bbifoss@seyfarth.com

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14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 10 / 09 / 2024



Plaintiff Theresa Moore

Dated: _____

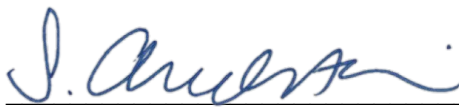
Plaintiff Louis Noriega

Dated: _____

[name]
For Defendant QVC, Inc.

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: September 27, 2024 

Zachary Crosner
Jamie Serb
Sepideh Ardestani
Crosner Legal, PC
Attorney for Plaintiffs

Dated: _____

Bailey K. Bifoss
Seyfarth Shaw LLP
Attorney for Defendant

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Louis Noriega et al. v. QVC, Inc.
Superior Court of the State of California for the County of San Bernardino
Case No. CIVSB2319032

This notice is to the following individuals in connection with a pending class action settlement:

All individuals who are or previously were employed by QVC, Inc. in California who were classified as non-exempt at any time between December 24, 2021 and August 22, 2024.

Read this notice carefully. Your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of San Bernardino (the “Court”) has preliminarily approved this class and representative action lawsuit filed by Louis Noriega and Theresa Moore (“Class Representatives”) against QVC, Inc. (“QVC”) for alleged wage and hour violations (the “Lawsuit”).

The Lawsuit is based on the following legal causes of action: (1) minimum wage violations; (2) failure to pay overtime wages; (3) meal period violations; (4) rest period violations; (5) paid sick leave violations; (6) unpaid vacation wages; (7) untimely payment of wages; (8) wage statement violations; (9) waiting time penalties; (10) failure to reimburse business expenses; (11) failure to pay for all nonproductive time; (12) failure to keep and produce accurate and required records; (13) failure to provide suitable seating; (14) failure to pay reporting time pay; (15) unlawful agreements and/or conditions of employment; (16) unlawful criminal and/or financial background checks; (17) unlawful deductions; (18) violation of California’s Day of Rest Law; (19) civil penalties under the Private Attorneys General Act (Labor Code section 2698, *et seq.*); and (20) other related claims. QVC denies all of Class Representatives’ claims and allegations and maintains it has fully complied with the law. The Court has made no determination whether Class Representatives or QVC is correct on the merits and, by agreeing to settle, QVC does not admit any violations or concede the merits of any claim.

QVC’s records reflect you worked **[[Individual Workweeks]]** workweeks for QVC during the Class Period of December 24, 2021, through August 22, 2024. Based on this information, your Individual Class Payment is estimated to be \$**[[Individual Class Payment]]** (less any applicable state and federal withholdings). The actual amount you may receive will likely be different and will depend on multiple factors, such as how many other individuals decide to opt out.

QVC’s records also reflect you worked **[[Individual Pay Periods]]** pay periods for QVC during the PAGA Period of March 15, 2022 through August 22, 2024. Based on this information, your Individual PAGA Payment is estimated to be \$**[[Individual PAGA Payment]]**

<u>YOUR OPTIONS</u>	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement and release your claims as described below in exchange for compensation.
OPT OUT	You may opt out of the Class Settlement by submitting a written Request for Exclusion by the Response Deadline, which is _____. If you opt out, you may not object to the Settlement, you will not receive an Individual Class Payment, and you shall not be bound by the class release provisions in the settlement. See Section 8 below. You cannot opt out of the PAGA portion of the proposed Settlement. QVC must pay Individual PAGA Payments to all PAGA Members, and the PAGA Members must give up their rights to pursue Released PAGA Claims.
OBJECT	If you do not opt out of the Class Settlement, you can object to the Settlement by submitting a written objection by the Response Deadline which is _____. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Class Members who do not opt-out ("Participating Class Members"). You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement. See Section 9 below.

The Court's final approval hearing is scheduled to take place on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. S-26 of the San Bernardino Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You do not have to attend but you do have the right to appear. ***For more information, please carefully read this notice.***

1. WHAT IS THE ACTION ABOUT?

The Class Representatives are former employees of QVC. The Class Representatives alleged QVC violated California labor and employment laws as follows: (1) minimum wage violations; (2) failure to pay overtime wages; (3) meal period violations; (4) rest period violations; (5) paid sick leave violations; (6) unpaid vacation wages; (7) untimely payment of wages; (8) wage statement violations; (9) waiting time penalties; (10) failure to reimburse business expenses; (11) failure to pay for all nonproductive time; (12) failure to keep and produce accurate and required records; (13) failure to provide suitable seating; (14) failure to pay reporting time pay; (15) unlawful agreements and/or conditions of employment; (16) unlawful criminal and/or financial background checks; (17) unlawful deductions; (18) violation of California's Day of Rest Law; (19) civil penalties under the Private Attorneys General Act (Labor Code section 2698, *et seq.*); and (20) other related claims.

Plaintiffs are represented by Blumenthal Nordrehaug, Bhowmik De Blouw LLP and Crosner Legal, PC.

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

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

So far, the Court has made no determination whether Class Representatives or QVC are correct on the merits.

In the meantime, Class Representatives and QVC hired an experienced, neutral mediator and negotiated extensively between Class Counsel and QVC's counsel in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Class Representatives and QVC have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, QVC does not admit any violations or concede the merit of any claims.

3. WHAT ARE PROPOSED SETTLEMENT TERMS?

At the Final Approval Hearing, the Class Representatives, through Class Counsel, will ask the Court to approve a Gross Settlement Amount of \$1,500,000.00 and authorize the following deductions: Service Payments to Plaintiffs in the amount of \$10,000 each (for a total of \$20,000), Class Counsel Fees Payment in the amount of \$500,000 (to be allocated 70% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and 30% to Crosner Legal, PC), Class Counsel Litigation

Expenses Payment not to exceed \$33,000, PAGA Penalties in the amount of \$100,000 (to be allocated 75% (\$75,000) allocated to the LWDA PAGA Payment and 25% (\$25,000) allocated to the Individual PAGA Payments), and the Administration Expenses Payment not to exceed \$18,000 to be paid to the third-party Administrator.

After making the above deductions in amounts approved by the Court from the Gross Settlement Amount, the remaining portion, the “Net Settlement Amount,” shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$ [REDACTED]. The Administrator will calculate and distribute Individual Class Payments to Participating Class Members based on their Workweeks. 20% of each Individual Class Payment shall constitute taxable wages (“Wage Portion”) and 80% shall constitute interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. QVC will separately pay employer payroll taxes it owes on the Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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

You will be treated as a Participating Class Member, participating fully in the settlement, unless you submit a signed Request for Exclusion by the [Response Deadline] “Response Deadline”.

After the Judgment is final and QVC has fully funded the settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the class claims released under the settlement, as follows:

Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal or state law that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint which occurred during the Class Period (the “Released Class Claims”). The Released Class Claims are claims based on the facts stated in the Operative Complaint or claims that reasonably could have been alleged based on the facts stated in the Operative Complaint and include but are not limited to all claims for

rounding; failure to reimburse business expenses; failure to appropriately pay for all nonproductive time, rest, or recovery periods including failure to pay such time at the appropriate rate; failure to keep all accurate and required time and payroll records; failure to pay vested vacation and/or holiday pay and/or personal time off, including failure to pay such wages at the appropriate final rate of pay and failure to pay such wages timely; failure to produce payroll and/or personnel records; failure to provide suitable seating and/or resting facilities; failure to issue accurate wage statements; failure to provide meal periods, including without limitation missed, late, interrupted, and short meal periods, and failure to accurately record meal periods (including through rounding); failure to pay meal period premiums, including but not limited to failure to pay such premiums at the regular rate; failure to authorize and permit rest periods, including without limitation missed, late, interrupted, and short rest periods; failure to pay rest period premiums including failure to pay such premiums at the regular rate of pay; failure to pay minimum wage, including but not limited to failure to pay minimum wage for time spent performing off-the-clock work regarding pre- or post-shift work, health and/or other security screenings including screenings for COVID-19, off-the-clock work during meal periods, time spent in orientation or engaged in other administrative work, time spent traversing Defendant's property, and/or responding to work-related communications; failure to pay overtime, including failure to pay double-time, and failure to properly calculate and pay employees overtime and double-time at their regular rate of pay; failure to pay reporting time pay, including failure to pay reporting time pay at the appropriate regular rate of pay; claims regarding sick leave and supplemental sick leave ("sick leave"), including failure to provide sick leave, failure to provide notice of sick leave rights, use and/or balance, and failure to pay sick leave at the appropriate rate of pay; failure to timely pay wages during employment; failure to timely pay wages at separation; requiring Participating Class Members to agree to unlawful conditions of employment, including non-compete, non-disclosure, non-solicitation agreements and/or unlawful PAGA waivers; unlawful inquiries into criminal or financial background checks; unlawful deductions; violation of California's Day of Rest Law (i.e., failure to provide one day's rest in seven); unfair and/or unlawful business practices; and willful refusal to pay wages. The Released Class Claims shall include all claims that were or reasonably could have been alleged based on the facts of the Operative Complaint under the California Labor Code, wage orders, and applicable regulations, regardless of theory of recovery, including claims for violations of Labor Code sections 201, 202, 203, 204, 210, 212, 216, 218, 218.5, 221, 226, 226.2, 226.7, 227.3, 233, 234, 245-248.5, 248.6, 256, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, and 2802, as well as under Business & Professions Code section 17200 et seq., California Code of Regulations, title 8, section 11040, Civil Code 1786 et seq., and 15 U.S.C. 1681. The Released Class Claims also specifically include all PAGA Released Claims defined herein below. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the

Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert the PAGA claims released under the settlement, as follows (the "PAGA Release"):

Release of PAGA Claims. All Aggrieved Employees, including but not limited to Plaintiffs, and the LWDA 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 any and all PAGA claims or causes of action of whatever kind or nature which occurred during the PAGA Period that were or reasonably could have been brought based on the facts alleged in the Operative Complaint regardless of theory of recovery (the "Released PAGA Claims"). The Released PAGA Claims include but are not limited to any alleged violations of or relief under California Labor Code as outlined above including failure to pay wages at the place of discharge or at another appropriate location pursuant to Labor Code section 208; failure to provide a safe and healthful workplace, including by properly notifying employees of an exposure to COVID-19; failure to provide written commission agreements; unlawful agreements (including agreements regarding confidentiality, forum selection, choice of law, non-compete, non-disclosure, non-solicitation, release/waiver, PAGA waivers); unlawful inquiries into criminal and/or financial histories; and claims for violation of California Labor Code Sections 208, 210, 212, 216, 222, 223, 225.5, 226.2, 226.3, 226.6, 432, 432.5, 432.7, 553, 1024.5, 2350, 2751, 2810.5, 6400-6404, 6406-6407, 6409.6, 6409.6, and 6432, and California Code of Regulations, title 8, sections 11040, 1527, 3366, 3457, and 8397.4. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

4. HOW IS MY INDIVIDUAL CLASS PAYMENT CALCULATED?

The number of Workweeks you worked during the Class Period are stated on the first page of this Class Notice. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The Administrator will calculate your Individual Class Payments by (1) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and then (2) multiplying the result by the number of Workweeks worked by each respective Participating Class Member. In other words, you will receive a proportional recovery based on your length of employment in relation to other Class Members.

5. HOW CAN I CORRECT THE NUMBER OF WORKWEEKS?

You have until the Response Deadline to correct or challenge the number of Workweeks. You can submit your challenge by signing and sending a letter to the Administrator via mail or email to the Administrator at the following address:

Administrator:

The Administrator will accept QVC's calculation of Workweeks as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you.

6. HOW IS MY INDIVIDUAL PAGA PAYMENT CALCULATED?

The number of PAGA Pay Periods you worked during the PAGA Period are stated on the first page of this Class Notice. The Administrator will calculate your Individual PAGA Payments by (1) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$25,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (2) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. In other words, you will receive a proportional recovery based on your length of employment in relation to other PAGA Members.

If no amount is stated for your Individual PAGA Payment, then according to QVC's records you are not eligible for an Individual PAGA Payment under the Settlement.

7. HOW WILL I GET PAID?

The Administrator will send, by U.S. mail, a single check to every Participating Class Member following the Effective Date of this Settlement. Your check will be sent to the same address as this notice. If you change your address, notify the Administrator as soon as possible.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. The Administrator's contact information is as follows:

Name of Administrator: _____
Email Address: _____
Mailing Address: _____
Telephone Number: _____
Fax Number: _____
Settlement Website: _____

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

Submit a written and signed letter to the Administrator at the address above with your name, address, telephone number, e-mail address, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Noriega v. QVC*, and include your identifying information (full name, address, telephone number, e-mail address, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes it for you, it will not be valid. **The Administrator must be sent your request to be excluded by [[Response Deadline]], or it will be invalid.**

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up the claims set forth in the PAGA Release.

9. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement by submitting a written objection to the Administrator before the Response Deadline. To object, please provide a written statement to the Administrator advising what you object to, why you object, and any facts that support your objection. Please sign the objection and identify the Action and include your name, current address, telephone number, and your approximate dates of employment. The address for the Administrator is in Section 7 above.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing by Zoom through the Court's website or by telephone using CourtCall (888-882-6878 or www.courtcall.com) to schedule a remote appearance. Check the Court's website (<https://www.sb-court.org/general-information/remote-access>) for the most current information on appearing in Court. See Section 10 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of documents at no cost to you. You can also view relevant documents on the Administrator's website at _____ or on the Court's website (<https://cap.sb-court.org/login>) and entering the Case No. CIVSB2319032.

The contact information for Class Counsel is:

Kyle Nordrehaug

Blumenthal Nordrehaug Bhowmik DeBlouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com
Website: www.bamlawca.com

10. CAN I ATTEND THE FINAL APPROVAL HEARING?

You may, but are not required to, attend the Final Approval Hearing on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. At the hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to the LWDA, Class Counsel, the Class Representatives, and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing, either in person or remotely using Zoom through the Court's website or CourtCall (888-882-6878 or www.courtcall.com) to schedule a remote appearance. Check the Court's website (<https://www.sb-court.org/general-information/remote-access>) for the most current information on appearing in Court.

It is possible the Court will reschedule the Final Approval Hearing. Please review the Court's online docket via the Case Information page for the San Bernardino County Superior Court (<https://cap.sb-court.org/login>) and entering the Case No. CIVSB2319032 or contact the Administrator or Class Counsel to verify the date and time of the Final Approval Hearing if you believe it may have been continued or otherwise changed.

11. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything QVC and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Court's website the Court's website (<https://cap.sb-court.org/login>), access the Case Information page, and search for Case No. CIVSB2319032. The Agreement and the Judgment will be posted on the Administrator's website at _____. You can also telephone or send an email to the Administrator at the address below:

Administrator: _____
Email Address: _____
Mailing Address: _____
Telephone Number: _____
Fax Number: _____

Settlement Website:

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

12. WHAT IF I LOSE MY SETTLEMENT CHECK OR FAIL TO CASH IT?

If you lose or misplace your settlement check, the Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void or you have otherwise failed to cash it, it will be provided to the State of California's Unclaimed Property Division in your name. For more information, please review how to process a claim for your funds with the State of California, https://www.sco.ca.gov/upd_form_claim.html.

EXHIBIT B

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

LOUIS NORIEGA and THERESA MOORE,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

QVC, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2309032

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Jessica Morgan
Dept: 26

Date Filed: August 9, 2023
Trial Date: Not set

1 This matter came before the Honorable Jessica Morgan of the Superior Court of the State of
2 California, in and for the County San Bernardino, on _____[DATE], for hearing on the
3 unopposed motion by Plaintiffs Louis Noriega and Theresa Moore (“Plaintiffs”) for preliminary
4 approval of the Settlement with Defendant QVC, Inc. (“Defendant”). The Court, having considered
5 the briefs, argument of counsel and all matters presented to the Court and good cause appearing,
6 hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA
7 Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement
10 (“Agreement”) attached as Exhibit ____ to the Declaration of _____ in Support of
11 Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement. This is based
12 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
13 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
14 Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all terms
16 defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount that Defendant shall pay is One Million Five Hundred
18 Thousand Dollars (\$1,500,000). It appears to the Court on a preliminary basis that the settlement
19 amount and terms are fair, adequate, and reasonable as to all potential Class Members when
20 balanced against the probable outcome of further litigation and the significant risks relating to
21 certification, liability, and damages issues. It further appears that investigation and research have
22 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that the Settlement will avoid substantial additional costs
24 by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
25 of the Action. It further appears that the Settlement has been reached as the result of serious and
26 non-collusive, arms-length negotiations.

1 4. The Court preliminarily finds that the Settlement appears to be within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this Court. The
3 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
4 preliminarily finds that the monetary settlement awards made available to the Class is fair, adequate,
5 and reasonable when balanced against the probable outcome of further litigation and the significant
6 risks relating to certification, liability, and damages issues.

7 5. The Agreement provides for an attorneys' fees award not to exceed one-third of the
8 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$33,000, and
9 proposed a Class Representative Service Payment to Plaintiffs in an amount not to exceed \$10,000
10 each. The Court will not approve the amounts of attorneys' fees and costs, nor the amount of any
11 service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence
12 supporting these requests, including lodestar, prior to final approval.

13 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
14 representative treatment and certification of a class for settlement purposes only. This stipulation
15 will not be deemed admissible in this or any other proceeding should this Settlement not become
16 final. For settlement purposes only, the Court conditionally certifies the Class which consists of "all
17 individuals who are or previously were employed by Defendant in California who were classified as
18 non-exempt in the State of California at any time during the Class Period." The "Class Period" is
19 December 24, 2021 to August 22, 2024.

20 7. The Court concludes that, for settlement purposes only, the Class meets the
21 requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)
22 the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable;
23 (b) common questions of law and fact predominate, and there is a well-defined community of
24 interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the
25 claims of Plaintiff are typical of the claims of the members of the Class; (d) Plaintiffs will fairly and
26 adequately protect the interests of the members of the Class; (e) a class action is superior to other
27
28

1 available methods for the efficient adjudication of this controversy; and (f) counsel for the Class is
2 qualified to act as counsel for the Class and Plaintiffs are adequate representatives of the Class.

3 8. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
4 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
5 of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Zachary Crosner, Jamie Serb, and Sepideh
6 Ardestani of Crosner Legal, PC as Class Counsel for the Class.

7 9. The Agreement provides for \$100,000 PAGA Penalties out of the Gross Settlement
8 Amount, of which \$75,000 shall be allocated to the Labor & Workforce Development Agency
9 (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this Agreement
10 pursuant to the PAGA and \$25,000 to the Aggrieved Employees. “Aggrieved Employees” are all
11 individuals who are or previously were employed by Defendant who were classified as non-exempt
12 in the State of California at any time during the PAGA Period (March 15, 2022 to August 22, 2024).
13 Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided notice of the
14 Agreement and these settlement terms. The Court finds the PAGA Penalties to be reasonable.

15 10. The Court hereby approves, as to form and content, the Class Notice attached to the
16 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
17 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right to
18 be excluded from the Class by submitting a written opt-out request, and of each member’s right and
19 opportunity to object to the Settlement. The Court further finds that the distribution of the Class
20 Notice substantially in the manner and form set forth in the Agreement and this Order meets the
21 requirements of due process, is the best notice practicable under the circumstances, and shall
22 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
23 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
24 Notice Packet is returned because of an incorrect address, the Administrator will promptly search for
25 a more current address for the Class Member and re-mail the Class Notice Packet to any new
26 address for the Class Member no later than seven (7) days after the receipt of the undelivered Class
27 Notice.

1 11. The Court hereby appoints Simpluris as the Administrator. No later than forty-five
2 (45) days after this Order, Defendant will provide the Class Data to the Administrator. The
3 Administrator will perform address updates and verifications as necessary prior to the first mailing.
4 Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after
5 receiving the Class Data, the Administrator will mail the Class Notice Packet to all Class Members
6 via first-class regular U.S. Mail to their last known address.

7 12. The Court hereby preliminarily approves the proposed procedure for exclusion from
8 the Settlement. Any Class Member may individually choose to opt out of and be excluded from the
9 Class as provided in the Class Notice by following the instructions for requesting exclusion from the
10 Class that are set forth in the Class Notice. All requests for exclusion must be postmarked or
11 received no later than sixty (60) calendar days after the date of the mailing of the Class Notice
12 (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline for requests
13 for exclusion will be extended an additional fourteen (14) days. A Request for Exclusion may also
14 be faxed or emailed to the Administrator as indicated in the Class Notice. Any such person who
15 chooses to opt out of and be excluded from the Class will not be entitled to any recovery under the
16 Class Settlement and will not be bound by the Class Settlement or have any right to object, appeal,
17 or comment thereon. Class Members who have not requested exclusion shall be bound by all
18 determinations of the Court, the Agreement, and the Judgment. A request for exclusion may only
19 opt out that particular individual, and any attempt to affect an opt out of a group, class, or subclass
20 of individuals is not permitted and will be deemed invalid.

21 13. Any Class Member who has not opted out may appear at the final approval hearing
22 and may object or express the Member’s views regarding the Settlement and may present evidence
23 and file briefs or other papers that may be proper and relevant to the issues to be heard and
24 determined by the Court as provided in the Class Notice. Class Members will have until the
25 Response Deadline to submit their written objections to the Administrator. Written objections may
26 also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class Notice
27 Packet is re-mailed, the Response Deadline for written objections will be extended an additional
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1 fourteen (14) days. Alternatively, Class Members may appear at the Final Approval Hearing to
2 make an oral objection.

3 14. A final approval hearing shall be held before this Court on _____
4 _____ at _____ in Department 26 at the San Bernardino County Superior Court to
5 hear the motion for final approval and for attorneys' fees and costs, and to determine all necessary
6 matters concerning the Settlement, including: whether the proposed settlement of the Action on the
7 terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be
8 finally approved by the Court; whether the Final Approval Order and Judgment should be entered
9 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
10 adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs,
11 service award, and the fees and expenses of the Administrator. All papers in support of the motion
12 for final approval shall be filed with the Court and served on all counsel no later than sixteen (16)
13 court days before the hearing and the motion shall be heard at this final approval hearing.

14 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
15 shall be construed as a concession or admission by Defendant in any way that the claims asserted
16 have any merit or that this Action was properly brought as a class or representative action, and shall
17 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
18 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or
19 with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is
20 finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or
21 conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be
22 construed as, offered or admitted in evidence as, received as or deemed to be evidence for any
23 purpose adverse to the Defendant, including, but not limited to, evidence of a presumption,
24 concession, indication or admission by Defendant of any liability, fault, wrongdoing, omission,
25 concession or damage.

26 16. In the event the Settlement does not become effective in accordance with the terms of
27 the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
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1 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
2 the Parties shall revert to their respective positions as of before entering into the Agreement, and
3 expressly reserve their respective rights regarding the prosecution and defense of this Action,
4 including all available defenses and affirmative defenses, and arguments that any claim in the
5 Action could not be certified as a class action and/or managed as a representative action. In such an
6 event, the Court's orders regarding the Settlement, including this Order, shall not be used or referred
7 to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
8 Agreement with respect to the effect of the Agreement if it is not approved.

9 17. The Court reserves the right to adjourn or continue the date of the final approval
10 hearing and all dates provided for in the Agreement without further notice to Class Members and
11 retains jurisdiction to consider all further applications arising out of or connected with the proposed
12 Settlement.

13
14 **IT IS SO ORDERED.**

15 Dated: _____

16 _____
17 HON. JESSICA MORGAN
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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EXHIBIT C

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

LOUIS NORIEGA and THERESA MOORE,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

O QVC, INC., a Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2309032

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Jessica Morgan
Dept: 26

Date Filed: August 9, 2023
Trial Date: Not set

1 The unopposed motion of Plaintiffs Louis Noriega and Theresa Moore (“Plaintiffs”) for an
2 order finally approving the Class Action and PAGA Settlement Agreement (“Agreement”) with
3 Defendant QVC, Inc. (“Defendant”), attorneys’ fees and costs, service payments, and the expenses
4 of the Administrator duly came on for hearing on _____ before the Honorable Jessica
5 Morgan.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of San Bernardino, and over all
13 Parties to this litigation, including the Class.

14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of One Million Five Hundred
16 Thousand Dollars (\$1,500,000) and the terms set forth in the Agreement are fair, reasonable, and
17 adequate.

18 4. The Court further finds that the Settlement was the result of arm’s length negotiations
19 conducted after Class Counsel had adequately investigated the claims and became familiar with the
20 strengths and weaknesses of those claims. In particular, the amount of the Settlement, and the
21 assistance of an experienced mediator in the settlement process, among other factors, support the
22 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

24 5. On _____, the Court granted preliminary approval of the Settlement. At the
25 same time, the Court approved conditional certification of the Class for settlement purposes only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about _____. Mailing of the Class Notice to Class Members' last-known addresses was
5 the best notice practicable under the circumstances and was reasonably calculated to communicate
6 actual notice of the litigation and the proposed settlement to the Class. The Class Notice given to
7 the Class Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully
10 with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided Class
12 Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out or submitting written objections to the
14 Settlement was _____, which for re-mailings was extended by fourteen (14) days. There
15 was an adequate interval between notice and the deadline to permit Class Members to choose what
16 to do and to act on their decision. A full and fair opportunity has been afforded to the Class
17 Members to participate in this hearing, and all Class Members and other persons wishing to be heard
18 have had a full and fair opportunity to be heard. Class Members also have had a full and fair
19 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the Court
20 determines that all Class Members who did not timely and properly submit a request for exclusion
21 are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.* 48
24 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before David Rotman, a respected and experienced mediator of
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1 wage and hour class actions. There has been no collusion between the Parties in reaching the
2 Settlement.

3 b. Plaintiffs' and their counsel's investigation and discovery have been
4 sufficient to allow the Court and counsel to act intelligently.

5 c. Counsel for all Parties are experienced in similar employment class action
6 litigation. Plaintiffs' counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. Of ____
8 Class Members who received the Class Notice, only ____ objected to the Settlement. Only
9 _____ requests for exclusion were received.

10 e. The participation rate was high. _____ Class Members will be mailed a
11 settlement payment, representing ____% of the overall Class.

12 9. The consideration to be given to the Class Members under the terms of the
13 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
14 asserted in this action and is fair, reasonable, and adequate compensation for the release of Class
15 Members' claims, given the uncertainties and significant risks of the litigation and the delays which
16 would ensue from continued prosecution of the action.

17 10. The Agreement is approved as fair, adequate, and reasonable and in the best interests
18 of the Class Members.

19 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

20 11. An award of \$ _____ for attorneys' fees, representing one-third of the Gross
21 Settlement Amount, and \$ _____ for litigation costs and expenses, is reasonable, in light
22 of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
23 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
24 and billing statement.

25 **Class Representative Service Payments**

26 12. The Agreement provides for Class Representative Service Payments of not more than
27 \$10,000 each to Plaintiffs, subject to the Court's approval. The Court finds that a Class
28

1 Representative Service Payment in the amount of \$ _____ to each Plaintiff is reasonable in
2 light of the risks and burdens undertaken by Plaintiffs in this litigation, for their time and effort in
3 bringing and prosecuting this matter on behalf of the Class, and for their execution of a general
4 release.

5 **Administration Expenses Payment**

6 13. The Administrator shall calculate and administer the payment to be made to the Class
7 Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the Class
8 Representative Service Payments to Plaintiffs, issue all required tax reporting forms, calculate
9 withholdings and perform the other remaining duties set forth in the Agreement. The Administrator
10 has documented \$ _____ in fees and expenses, and this amount is reasonable considering the
11 work performed by the Administrator.

12 **PAGA Penalties**

13 14. The Agreement provides for PAGA Penalties of \$100,000 out of the Gross
14 Settlement Amount, \$75,000 of which shall be allocated to the Labor & Workforce Development
15 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
16 Agreement pursuant to the PAGA and \$25,000 to be distributed to the Aggrieved Employees. The
17 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
18 Aggrieved Employees' 25% share of PAGA Penalties (\$25,000) by the total number of PAGA Pay
19 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result
20 by each Aggrieved Employee's PAGA Pay Periods. "Aggrieved Employees" are all individuals
21 who are or previously were employed by Defendant who were classified as non-exempt in the State
22 of California at any time during the PAGA Period (March 15, 2022 to August 22, 2024). Pursuant
23 to Labor Code section 2699, subdivision (1)(2), the LWDA was provided notice of the Agreement
24 and these settlement terms and has not indicated any objection thereto. The Court finds the PAGA
25 Penalties to be reasonable.

1 II.

2 ORDERS

3 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

4 15. The Class is certified for the purposes of settlement only. The Class is defined as
5 follows:

6 All individuals who are or previously were employed by Defendant in California who
7 were classified as non-exempt in the State of California at any time during the Class
8 Period

8 The "Class Period" is December 24, 2021 to August 22, 2024.

9 16. All persons who meet the foregoing definition are members of the Class, except for
10 those individuals who filed a valid request for exclusion ("opt out") from the Class. [INSERT
11 REFERENCE TO IDENTIFY ANY OPT OUTS].

12 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
13 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
14 the amounts necessary to fully pay Defendant's share of payroll taxes in accordance with the
15 Agreement, by transmitting the funds to the Administrator no later than 14 days after the Effective
16 Date.

17 18. Class Counsel are awarded attorneys' fees in the amount of \$_____ and costs
18 in the amount of \$_____. Class Counsel shall not seek or obtain any other compensation or
19 reimbursement from Defendant, Plaintiffs or members of the Class.

20 19. The payment of Class Representative Service Payments in the amount of \$_____ to each Plaintiff is approved.

21 20. The payment of \$_____ to the Administrator for its fees and expenses is
22 approved.

23 21. The PAGA Penalties of \$100,000 is approved and is to be distributed in accordance
24 with the Agreement.

25 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall submit a
26 copy of this Final Approval Order and Judgment to the LWDA within 10 days after its entry.
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1 23. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
2 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
3 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
4 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
5 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is,
6 may be construed as, or may be used as an admission by or against Defendant of any fault,
7 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
8 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
9 evidence of, an admission, or concession with regard to the denials or defenses by Defendant.
10 Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding this
11 Final Approval Order and Judgment, the Agreement, or any other papers and records on file in the
12 Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
13 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
14 Claims and/or Released PAGA Claims.

15 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
16 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
17 and Judgment shall be posted on the Administrator's website as set forth in the Class Notice to the
18 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment to
19 individual Class Members.

20 25. If the Agreement does not become final and effective in accordance with the terms of
21 the Agreement, then this Final Approval Order and Judgment, and all orders entered in connection
22 herewith, shall be rendered null and void and shall be vacated, and the Parties shall revert to their
23 respective positions as of before entering into the Agreement, and expressly reserve their respective
24 rights regarding the prosecution and defense of this Action, including all available defenses and
25 affirmative defenses, and arguments that any claim in the Action could not be certified as a class
26 action and/or managed as a representative action.

27 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

1 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
2 Plaintiffs, and all members of the Class, shall take nothing in the Action.

3 27. All Parties shall bear their own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 28. Effective on the date when Defendant fully funds the Gross Settlement Amount,
6 Plaintiffs, Participating Class Members, Aggrieved Employees, and the LWDA will release claims
7 against all Released Parties as follows:

8 (a) All Participating Class Members, on behalf of themselves and their respective
9 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
10 release Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties,
11 premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of
12 whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory
13 under federal or state law that were alleged, or reasonably could have been alleged, based on the
14 facts stated in the Operative Complaint which occurred during the Class Period (the "Released Class
15 Claims"). The Released Class Claims are claims based on the facts stated in the Operative
16 Complaint or claims that reasonably could have been alleged based on the facts stated in the
17 Operative Complaint and include but are not limited to all claims for rounding; failure to reimburse
18 business expenses; failure to appropriately pay for all nonproductive time, rest, or recovery periods
19 including failure to pay such time at the appropriate rate; failure to keep all accurate and required
20 time and payroll records; failure to pay vested vacation and/or holiday pay and/or personal time off,
21 including failure to pay such wages at the appropriate final rate of pay and failure to pay such wages
22 timely; failure to produce payroll and/or personnel records; failure to provide suitable seating and/or
23 resting facilities; failure to issue accurate wage statements; failure to provide meal periods,
24 including without limitation missed, late, interrupted, and short meal periods, and failure to
25 accurately record meal periods (including through rounding); failure to pay meal period premiums,
26 including but not limited to failure to pay such premiums at the regular rate; failure to authorize and
27 permit rest periods, including without limitation missed, late, interrupted, and short rest periods;

1 failure to pay rest period premiums including failure to pay such premiums at the regular rate of pay;
2 failure to pay minimum wage, including but not limited to failure to pay minimum wage for time
3 spent performing off-the-clock work regarding pre- or post-shift work, health and/or other security
4 screenings including screenings for COVID-19, off-the-clock work during meal periods, time spent
5 in orientation or engaged in other administrative work, time spent traversing Defendant's property,
6 and/or responding to work-related communications; failure to pay overtime, including failure to pay
7 double-time, and failure to properly calculate and pay employees overtime and double-time at their
8 regular rate of pay; failure to pay reporting time pay, including failure to pay reporting time pay at
9 the appropriate regular rate of pay; claims regarding sick leave and supplemental sick leave ("sick
10 leave"), including failure to provide sick leave, failure to provide notice of sick leave rights, use
11 and/or balance, and failure to pay sick leave at the appropriate rate of pay; failure to timely pay
12 wages during employment; failure to timely pay wages at separation; requiring Participating Class
13 Members to agree to unlawful conditions of employment, including non-compete, non-disclosure,
14 non-solicitation agreements and/or unlawful PAGA waivers; unlawful inquiries into criminal or
15 financial background checks; unlawful deductions; violation of California's Day of Rest Law (i.e.,
16 failure to provide one day's rest in seven); unfair and/or unlawful business practices; and willful
17 refusal to pay wages. The Released Class Claims shall include all claims that were or reasonably
18 could have been alleged based on the facts of the Operative Complaint under the California Labor
19 Code, wage orders, and applicable regulations, regardless of theory of recovery, including claims for
20 violations of Labor Code sections 201, 202, 203, 204, 210, 212, 216, 218, 218.5, 221, 226, 226.2,
21 226.7, 227.3, 233, 234, 245-248.5, 248.6, 256, 510, 512, 551, 552, 558, 558.1, 1024.5, 1174, 1174.5,
22 1194, 1197, 1197.1, 1198, 1198.5, 1199, and 2802, as well as under Business & Professions Code
23 section 17200 et seq., California Code of Regulations, title 8, section 11040, Civil Code 1786 et
24 seq., and 15 U.S.C. 1681. The Released Class Claims also specifically include all PAGA Released
25 Claims defined herein below in paragraph 28(b). Except as expressly set forth in this Agreement,
26 Participating Class Members do not release any other claims, including claims for vested benefits,
27 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,
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1 disability, social security, workers' compensation, or claims based on facts occurring outside the
2 Class Period.

3 (b) All Aggrieved Employees, including but not limited to Plaintiffs, and the
4 LWDA are deemed to release, on behalf of themselves and their respective former and present
5 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties
6 from any and all PAGA claims or causes of action of whatever kind or nature which occurred during
7 the PAGA Period that were or reasonably could have been brought based on the facts alleged in the
8 Operative Complaint regardless of theory of recovery (the "Released PAGA Claims"). The Released
9 PAGA Claims include but are not limited to any alleged violations of or relief under California
10 Labor Code as outlined in paragraph 28(a) above including failure to pay wages at the place of
11 discharge or at another appropriate location pursuant to Labor Code section 208; failure to provide a
12 safe and healthful workplace, including by properly notifying employees of an exposure to COVID-
13 19; failure to provide written commission agreements; unlawful agreements (including agreements
14 regarding confidentiality, forum selection, choice of law, non-compete, non-disclosure, non-
15 solicitation, release/waiver, PAGA waivers); unlawful inquiries into criminal and/or financial
16 histories; and claims for violation of California Labor Code Sections 208, 210, 212, 216, 222, 223,
17 225.5, 226.2, 226.3, 226.6, 432, 432.5, 432.7, 553, 1024.5, 2350, 2751, 2810.5, 6400-6404, 6406-
18 6407, 6409.6, 6409.6, and 6432, and California Code of Regulations, title 8, sections 11040, 1527,
19 3366, 3457, and 8397.4. The Released PAGA Claims do not include other PAGA claims,
20 underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment
21 insurance, disability and worker's compensation, and claims outside of the PAGA Period.

22 (c) Plaintiffs and their respective former and present spouses, representatives,
23 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge
24 Released Parties from all claims, transactions, or occurrences, as fully set forth in the Agreement.

25 (d) As used herein, "Released Parties" means: Defendant and its present and
26 former affiliates including without limitation Qurate Retail Group, Inc. and all of their officers,
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1 directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, and
2 assigns, and any other person(s) acting by, through, under, or in concert with any of them.

3 29. For any Class Member or Aggrieved Employee whose Individual Class Payment
4 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
5 Administrator shall transmit the funds represented by such checks to the California Controller's
6 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
7 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

8 30. The Court hereby enters judgment in the entire Action as of the filing date of this
9 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the finality
10 of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction over the
11 interpretation, implementation, and enforcement of the Settlement and all orders entered in
12 connection therewith pursuant to California Code of Civil Procedure section 664.6.

13 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

14
15 Dated: _____

16
17 _____
HON. JESSICA MORGAN
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

EXHIBIT

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

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

July 19, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA PAGA ONLINE FILING ONLY

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

VIA U.S. CERTIFIED MAIL:

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

QVC, Inc.

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

QVC, Inc.

Attn: Human Resources / Legal Department
1200 Wilson Dr
MC 203
West Chester, PA 19380

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Division of Occupational Safety and Health; and QVC, Inc.
Date: July 19, 2023
Subject: *Theresa Moore v. QVC, Inc.*

Introduction

This office represents PLAINTIFF, Theresa Moore (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entity and individual managing agents of said entity: QVC, Inc. (hereinafter, this entity and its managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

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

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

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or

add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

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

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2751, 2802, 2810.5, 6400-6404, 6406-6407, 6409.6 and all applicable Wage Orders.

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

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

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

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform

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

Individual Liability Under Labor Code § 558.1

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

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

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the offices, stores, manufacturing centers, distribution centers, warehouses, facilities and/or other location(s) in California, including but not limited to the offices, stores, manufacturing centers, distribution centers, warehouses, facilities in Ontario, California. DEFENDANTS, through its various locations serve the manufacturing, distribution, ecommerce, retail and/or consumer products industry.¹ Although DEFENDANTS may operate a successful company or have a noble mission, DEFENDANTS do not comply with California's labor laws.

¹ See <https://www.qvc.com/>. Last visited on July 18, 2023.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of fulfillment member, warehouse worker and/or a similar title(s) and/or position(s) from in or around October 2021 through on or around May 15, 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Ontario, California location(s). PLAINTIFF regularly worked at least eight (8) to ten (10) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. PLAINTIFF was also compensated with bonuses/incentive pay and/or shift differential pay and/or other non-discretionary compensation.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' hire and continued employment; (13) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating and suitable resting facilities; (15) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment; and (16) fails and continues to fail

to provide a safe and healthful place of employment for NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES Further descriptions of the above-mentioned violations and others are explained below. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

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

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

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

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

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

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

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

DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each

Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

Time and Pay Records

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

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

Personnel Records

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

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

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-

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

EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

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

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times, interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

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

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

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work. For example, as explained below, PLAINTIFF was typically required to perform pre-shift off-the-clock work in the form of including but not limited to, waiting in line to access DEFENDANTS' timekeeping system / terminal and/or reinitiating DEFENDANTS' timekeeping system resulting daily/near daily pre-shift off-the-clock work that DEFENDANTS failed to take into account when scheduling any meal periods, resulting in late meal periods.

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

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

For example, at times, PLAINTIFF worked shifts lasting longer than ten (10) hours due to including but not limited to, preshift off-the-clock work, however, DEFENDANTS failed to provide PLAINTIFF with any version of a second meal period when PLAINTIFF worked shifts lasting longer than ten (10) hours.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes and/or forty-five minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises),

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

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

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

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

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

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

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

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

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

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

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

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were at times unable to take compliant rest periods due to their need to complete assigned job

duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

Based on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area. For example, to the extent rest periods were provided, DEFENDANTS frequently if not always required PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to take rest periods that were less than a full ten minutes due to including but not limited to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES being required to walk long distances across the warehouse/DEFENDANTS' facilities to any rest area from their workstations and/or from any rest area back to their workstations, resulting in the denial of a full "net" ten-minute rest period to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES during many if not all shifts worked, in violation of California rest period law.

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

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

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

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

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

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty,

for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

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

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

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

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

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is

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

suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS’ policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently required to stand in line behind other employees to access DEFENDANTS’ time-keeping system/terminal and/or were required to spend time reinitiating DEFENDANTS’ time-keeping system before they could clock in for the start of their shifts and/or after completing a purported meal period.

For example, PLAINTIFF typically spent at least approximately four (4) minutes standing in line each workday before PLAINTIFF could access DEFENDANTS’ time-keeping system/terminal to clock in for the start of PLAINTIFF’s shift, which said off-the-clock waiting time spent under DEFENDANTS’ control each workday was neither recorded nor compensated by DEFENDANTS, resulting in DEFENDANTS’ failure to compensate PLAINTIFF for all work time and the underpayment of wages owed to PLAINTIFF, among other violations of the Labor Code described herein. Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment and/or safety gear, make any necessary adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment,

and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue working due to the need to return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-related communications and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., gloves, goggles/safety glasses, hats/bump caps/safety helmets and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of

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

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

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

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

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

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

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

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

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

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

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

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

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

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a

separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

Failure to Provide Written Commission Agreements: Labor Code section 2751 requires that all commission contracts "be in writing and . . . set forth the method by which the commissions shall be computed and paid." Cal. Lab. Code section 2751(a) (2012). Under the statute, employers must also "give a signed copy of the contract to every employee who is a party [to the contract] and . . . obtain a signed receipt for the contract from each employee." *Id.* section 2751(b).

Based on information and belief, DEFENDANTS failed to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who were compensated on a commission basis with proper written commission agreements, in violation of Labor Code section 2751.

Violation of Labor Code Section 226.2: Labor Code section 226.2 requires an employer to pay employees compensated on a piece-rate basis separately for rest and recovery periods and nonproductive time, apart from any piece-rate pay. This statute further requires an employer to include on the wage statements for these employees the total hours of compensable rest and recovery period, the total hours for other non-productive time, the rates of compensation for these hours, and the gross wages paid for these hours. In addition, the statute requires that employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) The applicable minimum wage. Per case law, Labor Code section 226.2 also applies to employees compensated on a commission basis.

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

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

⁶ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷ Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

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

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

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

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

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

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

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

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

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

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

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

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

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

Reporting Time Pay Violations:

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

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

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

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

Violation of California Day of Rest Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

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

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

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

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

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

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

Violation of Labor Code Section 208:

Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

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

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

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

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

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

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

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

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not limited to, to receive and respond to work-related messages and/or phone calls. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT

AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining their own hand tools and/or equipment required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

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

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

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

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or

nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

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

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

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

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

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

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing

consent to DEFENDANTS to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

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

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

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

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

representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

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

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

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

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

Specifically, Labor Code section 6400, requires the following:

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

Labor Code section 6401 provides as follows:

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

Labor Code section 6401.7 (a) provides as follows:

Every employer shall establish, implement, and maintain an effective injury prevention program.

Labor Code section 6402 prohibits the following:

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

Similarly, Labor Code section 6404 provides as follows:

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

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

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

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

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

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

Finally, Labor Code section 6407 provides:

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

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

At all relevant times, DEFENDANTS employed PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subject to Labor Code sections 6400-6404, 6406, and 6407.

At all relevant times, DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and/or provide reasonable access to sanitation facilities (including, but not limited to, toilet facilities) and/or otherwise comply with sanitation standards reasonably adequate to render such employment and place of employment safe and healthful, pursuant to, including but not limited to, Labor Code section 6401.

At all relevant times, DEFENDANTS had a policy and practice of failing to establish, implement, and/or maintain an effective injury prevention program, in violation of Labor Code section 6401.7.

At all relevant times DEFENDANTS had a policy and practice of requiring or permitting employees to go or be in in any employment or place of employment which is not safe and healthful, pursuant to Labor Code section 6402.

At all relevant times, DEFENDANTS had and have a policy and practice of failing or neglecting to: provide and use safety devices and/or provide reasonable access to sanitation facilities (e.g., toilet facilities) and/or otherwise comply with sanitation standards and safeguards reasonably adequate to render the employment and place of employment safe; adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and do every other thing reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code section 6403.

PLAINTIFF is informed and believes and thereon alleges that these failures include, without limitation, failing to implement and/or effectively administer a proper injury and illness prevention program; failing to disinfect time clocks and/or other surfaces after use by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate protection equipment (e.g., face masks) to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide adequate distance in working conditions between PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES; failing to provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with adequate and readily accessible sanitation facilities, including but not limited to, washing facilities and/or toilet facilities and/or otherwise failing to comply with the sanitation standards as set forth in including but not limited to, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3364, 3365 and 3366.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide adequate and readily accessible sanitation facilities, and to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, a regular schedule for servicing, cleaning, and supplying for any sanitation facility to ensure it is maintained in a clean, sanitary and serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient number of toilets for use for each employee.

Based on further information and belief, to the extent sanitation facilities were provided/made accessible at all to PLAINTIFF, other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES, DEFENDANTS failed to maintain facilities that complied with California law, including without limitation, Labor Code Section 2350 and California Code of Regulations, title 8, sections 3203, 3364, 3365 and 3366.

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Wed, Jul 19, 2023 at 9:41 AM

7/19/2023

LWDA Case No. LWDA-CM-969363-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Theresa Moore
Employer: QVC, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT

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