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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JENNIFER REYES, on behalf of herself
and others similarly situated,

Plaintiff,

v.

RESONETICS, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00041280-CU-OE-CTL

Judge: Hon. Joel R Wohlfeil

Department: C-73

CLASS ACTION

**DECLARATION OF ENOCH J. KIM IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Kimberly
Sutherland; Declaration of Jennifer Reyes;
Memorandum of Points and Authorities; and
[Proposed] Order]*

Date: August 1, 2025
Time: 9:00 a.m.
Dept.: C-73

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1 Rosa v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787),
2 Harvey v. Bed Bath & Beyond of California Limited Liability Company (Superior Court of
3 California in Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of
4 California in Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in
5 Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-
6 cv-01084-L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los
7 Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles,
8 BC 632 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
9 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in
10 Los Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior
11 Court of California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc.
12 (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v.
13 Victor Valley Global et al. (Superior Court of California in San Bernardino, CIVDS1709289),
14 Puerta-Gildardo v. Real Time Staffing Services LLC et. al. (Superior Court of California in Los
15 Angeles, BC565445), Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in
16 Tulare, 270836), Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-
17 cv-05534-LHK), Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-
18 cv-04910-FMO), Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-
19 02356-H-JMA), Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-
20 RAO), Leach v. The Claremont Colleges, Inc. (Superior Court of California in Los Angeles,
21 BC686451), Vaesau v. PCT Enterprises, Inc. dba Precision Cabinets (Superior Court of
22 California, County of Contra Costa MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area
23 Beverage Company (Superior Court of the State of California, County of Contra Costa, MSC18-
24 00859), Roach v. Westcare California, Inc. (Superior Court of California in Kern County, BCV-
25 17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central District of California, EDCV 18-
26 903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court of California in Madera,
27 MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court of California in Los
28 Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al. (Superior Court of

1 California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of
2 California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of
3 California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court
4 of California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior
5 Court of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX
6 Corporation dba IMAC Worldwide Home (Superior Court of California in San Bernardino,
7 CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles,
8 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-
9 cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in
10 Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in
11 Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San
12 Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of
13 California in Alameda, HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior
14 Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc.
15 (Superior Court of California in San Bernardino, CIVDS1915743), Viridi v. Absolute Security
16 International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First
17 Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS),
18 Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-
19 00008179-CU-OE-NC), among others.

20 6. As Senior Counsel at D.Law, I manage the class action and PAGA settlement
21 department. I was admitted to the California Bar in December 2008. I received my J.D. from
22 Pepperdine University School of Law and B.S. from University of Southern California. Since
23 graduating from law school, I have dedicated virtually my entire career on the practice of
24 employment law. I have practiced employment law from the plaintiff's side, defense side, and
25 from an in-house position. I have significant experience specifically working on wage and hour
26 class actions from the plaintiff's side as well as the defense side, with the majority of my
27 experience coming from the plaintiff's side representing employees and obtaining significant
28 settlements on their behalf.

1 7. Attorney Roman Shkodnik is Senior Counsel at D.Law and counsel of record for
2 Plaintiff. Mr. Shkodnik received his Bachelor of Arts in history and political science from the
3 University of California, Los Angeles, in 2007, and then earned his Juris Doctorate from Loyola
4 Law School in May of 2011. Upon graduating from law school, Mr. Shkodnik has exclusively
5 focused his practice on representing employees, including in wage-and-hour class actions. During
6 his career, Mr. Shkodnik has represented employees in over 100 wage-and-hour class action
7 lawsuits as lead or co-lead counsel (including in the Central, Southern, Eastern and Northern
8 Districts of California), and has also obtained six and seven figure settlements against a range of
9 defendants, including Fortune 500 companies. These cases have involved the gamut of wage-and-
10 hour claims, including claims for failure to pay minimum wages, unpaid wages and overtime,
11 failure to provide meal breaks, inaccurate pay statements, and failure to pay timely wages -
12 similar to claims at issue in the present matter.

13 8. The collective experience of the D.Law attorneys in litigating employment wage and
14 hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses
15 of a case, and generally negotiating fair and reasonable class and representative action
16 settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge
17 concerning the constantly evolving substantive law (state and federal), as well as the procedural
18 law of class and representative action litigation. In this action, the attorneys at D.Law are fully
19 equipped to use the skills and knowledge developed over decades of prosecuting and defending
20 wage and hour class actions to fairly and adequately represent the interests of the class members.
21 Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law are well-
22 qualified to act as class counsel and represent Plaintiff and the putative class members in this
23 action.

24 9. For purposes of this motion, the “Class” or “Class Members” consist of all persons
25 employed by Defendant in California and classified as non-exempt hourly employee who worked
26 for Defendant during the Class Period from July 19, 2019 through July 21, 2024. I do not believe
27 that I have any conflicts of interest with the Class or with the Class Representative. I am not
28 related to the Class Representative. I have not previously represented Defendant in any matter. I

1 respectfully submit that I, and D.Law, Inc. are well suited to act as Class Counsel in this action,
2 and we have and will continue to vigorously represent the interests of the Class Members.

3 **PROCEDURAL HISTORY**

4 10. On July 19, 2023, Plaintiff Reyes filed a Class Action Complaint alleging causes of
5 action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
6 Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4)
7 Rest-Break Liability Under Labor Code § 226.7; (5) Reimbursement of Necessary Expenditures
8 Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Failure to Keep Required
9 Payroll Records under Labor Code §§ 1174 and 1174.5; (8) Penalties Pursuant to Labor Code §
10 203; (9) Violation of Business & Professions Code § 17200 et seq.; and (10) Failure to Make
11 Proper Disclosure in Violation of the FCRA. On July 19, 2023, pursuant to Labor Code §2699.3,
12 subd.(a), Plaintiff Reyes gave timely notice to the LWDA and Defendant that Plaintiff Reyes
13 intended to proceed with a representative action under PAGA (LWDA-CM-969517-23) (“PAGA
14 Notice”). The PAGA Notice is attached hereto as **Exhibit 2**. On August 23, 2023, Defendant
15 filed its notice of removal. On September 21, 2023, Plaintiff filed a PAGA Representative Action
16 for penalties under PAGA for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
17 Overtime Under Labor Code § 510; (3) Meal Period Liability under Labor Code § 226.7; (4) Rest
18 Break Liability under Labor Code § 226.7; (5) Reimbursement of Necessary Business
19 Expenditures Under Labor Code § 2802; (6) Violation of Labor Code §§ 226(a) and 1174; and (7)
20 Violation of Labor Code §§ 203 and 204. Pursuant to the terms of the Settlement, the Parties filed
21 a Joint Stipulation on September 12, 2024 to file a First Amended Class Action Complaint in San
22 Diego County Superior Court. On October 8, 2024, Plaintiff filed a First Amended Class Action
23 Complaint alleging the same ten causes of action in the July 19, 2023 complaint and adding an
24 eleventh cause of action for penalties pursuant to Labor Code § 2699, et seq. (“Operative
25 Complaint”).

26 **INVESTIGATION AND DISCOVERY**

27 11. Before filing the lawsuit, Class Counsel investigated and researched the facts and
28 circumstances underlying the pertinent issues and the law applicable thereto. This required

1 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
2 research into the various legal issues involved in the case. After conducting their initial
3 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and
4 representative action adjudication owing to what appeared to be a common course of conduct
5 affecting a similarly situated group of employees.

6 12. After filing the lawsuit, Class Counsel conducted thorough investigation into the facts
7 of, and applicable law to, the Action, including speaking to current and former employees of
8 Defendant regarding Defendant's employment policies and practices. Prior to mediation, Plaintiff
9 also obtained and analyzed a representative sampling of time and payroll data for Class Members
10 and the necessary policy documents through informal discovery to properly evaluate the strengths
11 and weaknesses of the claims and engage in meaningful settlement discussions. The Class
12 enumerated in this action is ascertainable because the Class Members may be readily identified
13 by reference to Defendant's records. Defendant has agreed to share information from these
14 records with the Class Action Administrator in order to identify and contact the Class Members.
15 There are approximately 235 total Class Members.

16 13. Defendant, for its part, vigorously contested liability, the amount of claimed damages,
17 and the propriety of class certification. After Class Counsel analyzed the relevant documents and
18 other gathered data, Class Counsel believed that this case was appropriate for resolution via
19 mediation. Given the high level of risk present for both sides, the Parties elected to mediate
20 Plaintiff's claims and explore the possibility of settlement.

21 14. On May 23, 2024, the Parties mediated this case with Gail Glick, Esq., a respected and
22 highly experienced mediator in wage and hour class actions. During mediation, Plaintiff's and
23 Defendant's counsel discussed all aspects of the case, including the risks of litigation and the
24 risks to both Parties of proceeding with a motion for class certification, as well as the law relating
25 to unpaid wages, meal periods, rest period, wage statements, reimbursement of necessary
26 expenditures, and final pay. The Parties agreed to settle the lawsuit according to the terms set
27 forth in the Settlement Agreement. From Class Counsel's review of the facts, strengths, and
28 weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own

1 prior litigation experience, Class Counsel believes that the recovery for each Class Member is fair
2 and reasonable taking into consideration the amounts received in other wage and hour class
3 actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class
4 Member's claim to the settlement award he or she will receive. Further, and based on the
5 settlement negotiations, which were extensive and conducted in good faith and at arm's length
6 between attorneys with substantial experience litigating class actions and wage and hour cases,
7 the Settlement Agreement was the product of a non-collusive settlement process in which the
8 Parties were forced to make significant compromises in the interest of reaching a full and
9 complete settlement of the lawsuit.

10 **SUMMARY OF SETTLEMENT**

11 15. Defendant has agreed to pay \$650,000.00 ("Gross Settlement Amount") on a non-
12 reversionary basis and to separately pay all employer payroll taxes owed on the Wage Portions of
13 the Individual Class Payments. (Exh. 1, ¶¶ 1.23, 3.1.)

14 16. The Settlement Agreement defines the "Class" or "Class Members" all persons
15 employed by Defendant in California and classified as non-exempt hourly employee who worked
16 for Defendant during the Class Period, which is July 19, 2019 through July 21, 2024. (Exh. 1, ¶¶
17 1.5, 1.10, 1.13.) The Settlement Agreement also defines "Aggrieved Employees" as all
18 individuals who were or have been employed by Defendant in California as non-exempt
19 employees at any time during the PAGA Period, which is July 19, 2022 through July 21, 2024.
20 (Exh. 1, ¶¶ 1.4, 1.32.).

21 17. The "Net Settlement Amount" shall be the Gross Settlement Amount, less the
22 following payments in the amounts approved by the Court: PAGA Penalties payment, Class
23 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
24 Expenses Payment, and the Administration Costs Payment. The remainder is to be paid to
25 Participating Class Members as Individual Class Payments. (Exh. 1, ¶ 1.29.) These amounts are
26 detailed as follows:

27 • Class Counsel Fees Payment of not more than one-third (1/3) of the Gross
28 Settlement Amount, which is currently estimated to be \$216,666.66, for attorneys' fees, and Class

1 Counsel Litigation Expenses Payment of not more than \$25,000.000 for litigation costs; (Exh. 1,
2 ¶ 3.2.2.);

3 • Class Representative Service Payment of not more than \$5,000.00 to Plaintiff for
4 her service as the class representative; (Exh. 1, ¶ 3.2.1.);

5 • Administration Expenses Payment of up to \$7,900.00 to the Settlement
6 Administrator for settlement administration costs; (Exh. 1, ¶ 3.2.3.);

7 • PAGA Penalties in the amount of \$65,000.00 for civil penalties under PAGA, with
8 75% (\$48,750.00) paid to the LWDA (“LWDA PAGA Payment”) and 25% (\$16,250.00) paid to
9 Aggrieved Employees based on the number of pay periods each Aggrieved Employee worked
10 during the PAGA Period (“Individual PAGA Payment”); (Exh. 1, ¶ 3.2.5.)

11 18. The Individual Class Payment is each Class Member’s share of the Net Settlement
12 Amount and will be calculated and apportioned from the Net Settlement Amount based on the
13 number of Workweeks a Class Member worked during the Class Period. (Exh. 1, ¶ 3.2.4.)

14 Additionally, the Parties agreed that the Individual Settlement Payment shall be allocated as
15 follows: 20% as alleged unpaid wages subject to all applicable tax withholdings (the “Wage
16 Portion”); and 80% as alleged unpaid interest and unpaid penalties (the “Non-Wage Portion”).
17 (Exh. 1, ¶ 3.2.4.1.).

18 19. The settlement amount was a compromise figure, factoring in the inherent risks related
19 to certification, liability, and damages. However, taking into account all of the circumstances of
20 the action and the defenses raised by Defendant against certification, liability, and damages, Class
21 Counsel believes that the settlement is fair and reasonable.

22 20. Class Members shall each receive a “Class Notice” via regular First Class U.S. Mail,
23 using the most current, known mailing addresses identified in the Class List. (Exh. 1, ¶ 7.4.2.)
24 Before mailing, the Settlement Administrator will perform a search based on the National Change
25 of Address Database for information to update and correct for any known or identifiable address
26 changes. (*Id.*) Any Class Notice returned by the USPS as undelivered, the Administrator shall re-
27 mail the Class Notice using any forwarding address provided by the USPS. (Exh. 1, ¶ 7.4.3.) If
28 the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member

1 Address Search, and re-mail the Class Notice to the most current address obtained. (*Id.*)

2 21. Class Members shall have forty-five (45) days¹ after the Administrator mails the Class
3 Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed)
4 to dispute the information provided in their Class Notices of Class Action Settlement and they
5 must timely produce evidence to support the information is inaccurate. (Exh. 1, ¶¶ 7.4.4, 7.6.) In
6 the absence of any contrary documentation, the Administrator is entitled to presume that the
7 Workweeks contained in the Class Notice are correct so long as they are consistent with the Class
8 Data. (Exh. 1, ¶ 7.6.)

9 22. Class Members wishing to opt-out from the Settlement Agreement must sign and
10 postmark a written Request for Exclusion to the Settlement Administrator within the Response
11 Deadline (Exh. 1, ¶ 7.5.1.) The deadline for exclusion will be forty-five (45) days² after the date
12 the Class Notice was mailed (plus an additional fourteen (14) days for Class Members whose
13 Class Notice is remailed). (*Id.*)

14 23. Class Members will also have the opportunity to object to the Settlement and/or this
15 Agreement, by serving a copy of the objection to the Settlement Administrator at Apex. (Exh. 1, ¶
16 7.7.) All objections must be served within forty-five (45) days³ of first mailing of the Class
17 Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-
18 mailed). (Exh. 1, ¶ 7.7.2.)

19 **THE STRENGTH OF PLAINTIFF'S CASE**

20 **IN LIGHT OF THE SETTLEMENT AMOUNT**

21 24. Because the class consists of numerous employees, it was unlikely that the potential
22 monetary claims of individual Class Members would have proved viable without the class-action
23 mechanism. The Settlement Agreement should be approved in light of two California appellate
24 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*

25 _____
26 ¹ Paragraph 7.6 of the Settlement Agreement incorrectly states that the deadline for challenging workweeks and/or
pay periods is 30 days after mailing of the Class Notice.

27 ² Paragraph 7.5.1 of the Settlement Agreement incorrectly states that the deadline for exclusion is 30 days after
mailing of the Class Notice.

28 ³ Paragraph 7.7.2 of the Settlement Agreement incorrectly states that the deadline for objections is 30 days after
mailing of the Class Notice.

1 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

2 25. The strength of the Plaintiff's case in light of the settlement amount is deemed by
3 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
4 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
5 minimum wages and overtime, failed to provide meal and rest breaks, failed to provide
6 reimbursement of business expenses, failed to provide accurate wage statements and keep
7 required payroll, and failed to pay all wages upon termination, all in violation of California law.
8 Plaintiff seeks related violations of California's Business & Professions Code and penalties
9 pursuant to Labor Code § 2699 *et seq.* The merits of each of these claims will be addressed
10 separately below.

11 26. Based on the data provided, Class Counsel estimated the potential realistic exposure for
12 the main claims as follows: unpaid wage claim at **\$25,618.50** for minimum wages and overtime,
13 meal period claim at **\$380,114.28**, rest period claim at **\$113,702.51**, wage statement claim at
14 **\$101,230.00**, waiting time penalties at **\$73,907.68**, unreimbursed business expenses claim at
15 **\$74,992.00**, and on PAGA at **\$102,980.00**, for a total maximum exposure of **\$872,544.97**.

16 27. Taking into account the difficulties of proof, Defendant's defenses, and other attendant
17 risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other relief that
18 the class could reasonably and realistically expect to be awarded at trial is significantly less than
19 the maximum exposure estimated for the claims in this case.

20 **Minimum Wages and Overtime**

21 28. Plaintiff alleged that Defendant failed to pay Plaintiff and other Class Members
22 minimum wages and overtime for all hours worked. Specifically, Plaintiff and Class Members
23 were not paid for the time that they worked "post-shift" without compensation by taking calls
24 from supervisors and human resources representatives after clocking out and time spent working
25 while clocked out for meal breaks and working through rest breaks. Additionally, Defendant
26 followed a uniform policy and practice of rounding all time entries to the nearest quarter hour,
27 rather than paying Plaintiff and the Class Members for all hours and minutes they actually
28 worked, to the detriment of the Class Members.

1 29. Defendant denied all allegations and contended that it paid for all reported hours
2 worked, that any off-the-clock work was performed without Defendant's knowledge and de
3 minimis, and that wages were paid at the proper rates. Defendant further argued that given their
4 written policies and practices, any unrecorded hours were likely subject to individualized inquiry
5 and unlikely to be certified. Defendant also argued that it did not engage in rounding of time
6 entries. Based on the above detailed facts, Class Counsel's expert estimated Defendant's exposure
7 on unpaid wages claims to be approximately \$2,139.00 due to the alleged rounding policy, and
8 unpaid overtime wages claims to be approximately \$83,256.00 at regular rate of pay. However,
9 given Defendant's defenses and the potential hurdles facing certification of this claim, Class
10 Counsel applied a 70% discount making for an adjusted realistic exposure of \$25,618.50 for
11 Defendant.

12 **Meal Periods and Rest Breaks**

13 30. Plaintiff alleged that Defendant consistently failed to provide uninterrupted meal
14 breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004,
15 1040 ("[T]he wage order's meal period requirement is satisfied if the employee (1) has at least 30
16 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the
17 entire period.").

18 31. Plaintiff argued that Defendant had a common practice and policy of denying
19 compliant meal periods. Specifically, Plaintiff and Class Members were regularly interrupted
20 during their meal periods and therefore were not provided with an off-duty thirty (30) minute
21 meal period in accordance with California law. For each meal period missed, of less than 30
22 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a
23 complete and timely meal period, an employer must pay the employee an additional one hour of
24 compensation. Labor Code § 226.7. This additional hour of compensation is referred to as
25 "premium pay." To comply with these laws, every employer must keep, for each employee,
26 accurate time records showing when the employee begins and ends each work period and takes
27 his or her meal periods. *See Wage Order 4-2001(7)(A)(3)*.

28 32. Defendant disagreed with Class Counsel's interpretation of the law and facts.

1 Defendant argued that in practice all employees were authorized, encouraged, and did in fact take
2 timely uninterrupted meal breaks. Defendant also argued that their written policies were valid and
3 disseminated to all Class Members. Defendant contended that Class Members were given a
4 reasonable opportunity to take their meal periods, and in fact received their meal periods most of
5 the time. Defendant also contended that on the occasions when compliant meal periods were not
6 provided, Class Members were paid premium pay in accordance with the law.

7 33. Class Counsel's expert estimated Defendant's maximum total exposure on the meal
8 break claim at approximately \$1,267,047.60 (55,185 unique meal break violations x \$22.96
9 regular rate of pay). However, Class Counsel believes this estimate is high given Defendant's
10 defenses and potential hurdles facing certification of this claim and thus provided a 70% discount
11 making Defendant's adjusted realistic exposure \$380,114.28.

12 34. The same arguments applied to rest breaks. Plaintiff contended that Defendant did not
13 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
14 thereof. Specifically, Plaintiff alleged that Class Members were required to work through their
15 rest breaks or had breaks provided on an untimely basis but were not compensated with premium
16 pay for missed or untimely rest breaks.

17 35. Defendant maintained that it did provide the reasonable opportunity for Class Members
18 to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks
19 need not be recorded. As these considerations would likely depress the damages *vel non*
20 ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break
21 claim. Class Counsel's expert estimated Defendant's maximum total exposure on the rest break
22 claim at approximately \$568,512.56 (assuming a 30% rest break violation rate for all Class
23 Member shifts x \$22.96 regular rate of pay). However, Class Counsel believes this estimate is
24 high given the difficulty of proving rest break violations at trial and the potential hurdles facing
25 certification of this claim, and thus applied an 80% discount making Defendant's exposure more
26 likely to be \$113,702.51.

27 **Paystub Violations**

28 36. Plaintiff also contended that Defendant failed to provide Class Members with accurate,

1 itemized wage statements in writing as required by California Labor Code § 226(a) because of the
2 systematical underpaying of Class Members due to the practice of rounding all time entries which
3 Defendant knew or reasonably should have known were owed to Plaintiff and Class Members. As
4 a direct and proximate cause of Defendant's violation of Labor Code § 226(a), the Class
5 Members suffered injuries, including among other things confusion over whether they received
6 all wages owed to them. Pursuant to Labor Code §§ 226(a) and 226(e), employees are entitled to
7 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
8 violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
9 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
10 award of costs and reasonable attorneys' fees.

11 37. Defendant contended that Plaintiff's claim for further Labor Code § 226(e) penalties
12 would depend in large part on the underlying wage claims, and thus be subject to the same
13 defenses. Even if Plaintiff could first establish liability for the underlying claims, Defendant
14 contends that Plaintiff and Class Members would be unable to establish that they suffered injury
15 and that Defendant's conduct was willful and knowing. Defendant further contended that wage
16 claim violations, even if established, could not be the predicate for a Labor Code § 226 wage
17 statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96;
18 *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage statement need
19 only document compensation actually received and the hours used to calculate that
20 compensation). Finally, because the damages for this cause of action are penalties, the statute of
21 limitations only runs from one year prior to the filing of the original complaint. *See* Cal. Civ. Pro.
22 § 340.

23 38. Class Counsel's expert estimated Defendant's maximum total exposure on the section
24 226 claim at approximately \$506,150.00 (\$50/\$100 per pay period x 5,149 pay periods during the
25 relevant period). The Parties discussed these issues, and in light of these and other considerations
26 Class Counsel factored in a reduction of liability and damages for this cause of action. Class
27 Counsel believes it may be difficult to prevail on this claim because Class Members would need
28 to show that they suffered an injury and that Defendant's noncompliance was knowing and

1 intentional (on top of the challenges described above with the underlying wage and break claims)
2 which are both subject to individualized issues making certification of this claim difficult to
3 achieve. Thus, Class Counsel provided an 80% discount making Defendant's adjusted exposure
4 \$101,230.00.

5 **Failure to Pay Final Wages**

6 39. In failing to pay the California Class Members their minimum wages, overtime wages,
7 all discussed above, Defendant willfully failed to pay these California Class Members all wages
8 due and certain at the time of termination or within seventy-two (72) hours of resignation, as
9 required under Labor Code § 203.

10 40. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
11 wages due at termination or within 72 hours of resignation, then that employee's wages shall
12 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
13 Because Class Members stopped working for Defendant but again were not paid their full
14 compensation for the reasons discussed above, Class Members did not receive all wages due upon
15 termination of employment.

16 41. Defendant contended that this claim is merely derivative of the underlying claims that
17 are without merit. Defendant argued that, under Labor Code § 203, employers are only obligated
18 to pay waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
19 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

20 A willful failure to pay wages within the meaning of Labor Code Section 203
21 occurs when an employer intentionally fails to pay wages to an employee when
22 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

23 A "good faith dispute" that any wages are due occurs when an employer presents
24 a defense, based in law or fact, which, if successful, would preclude any recovery
25 on the part of the employee. The fact that a defense is ultimately unsuccessful will
26 not preclude a finding that a good faith dispute did exist. Defenses presented
which, under all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of a "good
faith dispute."

27 Even if Plaintiff could first establish liability for the underlying claims, Defendant contends that
28 Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful

1 and knowing. Defendant maintained that because they had viable defenses in both law and fact,
2 especially in light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in
3 any case, such penalties were subject to a three-year limitations period under Labor Code §
4 203(b).

5 42. Plaintiff's expert estimated Defendant's maximum total exposure on the section 203
6 claim at approximately \$369,538.41 (73 terminated employees x 30 days x 8.3 hours per day x
7 \$20.33 average rate of pay). Class Counsel estimates it would be difficult to recover waiting time
8 penalties given that Plaintiff would need to show willfulness on top of proving the underlying
9 wage and break claims which are also potentially subject to individualized issues making
10 certification of this claim difficult to achieve. Thus, Class Counsel provided an 80% discount
11 making Defendant's adjusted exposure \$73,907.68.

12 **Failure to Reimburse for Necessary Business Expenditures**

13 43. Labor Code § 2802 provides that an employer must reimburse employees for all
14 necessary expenditures incurred in the performance of their job duties. Plaintiff worked for
15 Defendant and in the course of performing her job duties, incurred necessary business-related
16 expenses, including the cost of cell phone and internet usage and other costs associated with
17 working from home, which were necessary to perform their duties under Defendant's employ.
18 Defendant contended that Plaintiff and Class Members were not required to use their personal cell
19 phones for work and were also not required to perform work at home and that any expenses
20 incurred were not reimbursable under the law. Class Counsel's expert estimated that Defendant's
21 maximum total exposure for failing to reimburse business expenses is approximately \$187,480.00
22 (\$40 per month). Owing to the arguments above and the fact that this claim was not a major
23 driver of exposure in this case, Class Counsel accordingly applied an 80% discount, resulting in
24 \$74,992.00 in maximum realistic liability exposure for Defendant.

25 **PAGA Penalties**

26 44. The Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows
27 Plaintiff to obtain civil penalties on behalf of himself and other Class Members for Defendant's
28 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil

1 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
2 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
3 for each aggrieved employee per pay period for the initial violation and two hundred dollars
4 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
5 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
6 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
7 percent allocated to the affected employees. The limitations period as for all penalties is one year
8 prior to the filing of the complaint.

9 45. Plaintiff contends that the provisions of the Labor Code potentially triggering PAGA
10 penalties in this case include but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226,
11 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199,
12 2698, 2699 *et seq.*, and 2802 and applicable IWC Wage Orders. PAGA penalties are not
13 mandatory but permissive. Labor Code § 2699(e)(2) states that “a court may award a lesser
14 amount than the maximum civil penalty amount specified by this part if, based on the facts and
15 circumstances of the particular case, to do otherwise would result in an award that is unjust,
16 arbitrary and oppressive, or confiscatory.” *See Thurman v. Bayshore* (2012) 203 Cal. App. 4th
17 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant here
18 maintained that it had a strong argument that it would be unjust to award maximum PAGA
19 penalties.

20 46. Furthermore, PAGA penalties are also derivative of each and every other claim, and
21 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
22 underlying claims. Defendant also contends that even if Plaintiff and Class Members could
23 establish Labor Code violations, the Court has the discretion to award less than the maximum
24 civil penalty amount and would award substantially less civil penalties here because Defendant
25 acted in good faith to comply with the relevant wage and hour laws, and that even if there were
26 violations established, they would be minor and technical in nature. Finally, under *Amaral v.*
27 *Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be argued that penalties under PAGA could, at
28 best, be awarded only at the rates obtainable for initial violations under the applicable statutes,

1 because Defendant had never been notified of the alleged violations. *Id.* at 1208-1209. Moreover,
2 Section 2699(e)(1) authorizes the Court to exercise the same discretion as the DLSE whether to
3 award civil penalties. *Amaral* 163 Cal. App. 4th 1157, 1211-12. Therefore, if the Labor
4 Commissioner - on whose behalf Plaintiff is prosecuting this action for civil penalties - would not
5 impose civil penalties in a case like this, the Court may not award civil penalties. Moreover, in
6 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1136, the Court of
7 Appeal affirmed the trial court's reduction of PAGA civil penalties by 30 percent, finding that
8 awarding the full penalties would have been "unjust" because "...a court may award a lesser
9 amount than the maximum civil penalty amount specified by this part if, based on the facts and
10 circumstances of the particular case, to do otherwise would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory." Additionally, PAGA penalties for multiple Labor Code
12 violations are "stacked," and plaintiff is entitled to recover penalties for multiple violations based
13 on the same conduct. *Hernandez v. Towne Park, Ltd.*, No. 12 Civ. 02972, 2012 WL 2373372, at
14 *17 n.77 (C.D. Cal. June 22, 2012) ("federal courts applying California law have concluded that
15 stacking is appropriate"; defining "stacking" as multiple PAGA penalties assessed for the same
16 pay period for different Labor Code violations). However, as discussed above, PAGA provides
17 that the Court "may award a lesser amount than the maximum civil penalty amount specified by
18 this part if, based on the facts and circumstances of the particular case, to do otherwise would
19 result in an award that is unjust, arbitrary and oppressive, or confiscatory."

20 47. Class Counsel's expert estimated Defendant's maximum total exposure on the PAGA
21 claim at approximately \$514,900.00 (\$100 x 5,149 pay periods (no stacking)). Class Counsel then
22 applied discounts in light of the countervailing arguments with regard to the other causes of
23 action, and moreover the Court's power to award "a lesser amount than the maximum civil
24 liability." A discount of 80% would make the adjusted realistic exposure \$102,980.00. The
25 Parties also considered that the purpose of PAGA is to "achieve maximum compliance with state
26 labor laws,". *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes
27 the Settlement's contemplated PAGA payment of \$65,000.00 appropriate.

Unfair Business Practices

48. Plaintiff pleaded this cause of action in order to augment her other causes of action and aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiff's wage claims, which qualify as unfair business practices, to four years rather than the three years provided by statute.

Summary

49. The foregoing discussion has sought to explain how the settlement amount is adequate in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating Defendant's legal and factual arguments that worked to derogate from the strength of Plaintiff's case.

50. Class Counsel had to apply appropriate discounts in light of the facts and law as discussed above. Thus, this settlement, like most others, was the product of compromise. As addressed above, Plaintiff estimated that Defendant faced a total realistic exposure of approximately \$872,544.97. The Gross Settlement Amount of \$650,000.00 represents a recovery for the Class of approximately 74.49% of the total realistic exposure Plaintiff estimated that Defendant could face on the primary claims in this case. Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and particularly in light of all of the factors described above. Under the Settlement, each of the approximately 235 Class Members will receive an average of \$1,363.54 based on a straight average.

51. Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein.

52. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. Although the Parties engaged in significant informal discovery in advance of mediation, the

1 Parties still had significant discovery to complete had the matter not settled. This would have
2 required the expenditure of substantial time and resources by both Parties that would have very
3 likely spanned several years. Even if Plaintiff were to certify the classes, the Parties would incur
4 considerably more attorney fees and costs through a possible decertification motion, trial, and
5 possible appeal. This Settlement avoids those risks and the accompanying expense.

6 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
7 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**
8 **STATUS THROUGH TRIAL**

9 53. The next *Clark/Kullar* factors recognize that settlements take into consideration the
10 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
11 certification. Consequently, it is proper that trial courts should keep these considerations in mind
12 when judging the adequacy of class action settlements.

13 54. Further litigation of this case posed real risks for a number of reasons. First, there were
14 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
15 the previous section. In that section, it was observed that almost every cause of action was subject
16 to some unique indeterminacy of its own, and that the derivative causes of action were thus
17 subject to a double indeterminacy, both their own and those of the causes of action on which they
18 were based.

19 55. The Parties disputed the effect of these and other issues on class certification and
20 decertification. Class Counsel maintained that there were several legal and factual questions at
21 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
22 the same policies and practices applied to all Class Members and therefore common questions
23 obtained and were likely to predominate over individual inquiries. Defendant disputed these
24 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
25 such as this one. Defendant also argued that its policies were compliant with the law, while
26 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
27 give rise to common questions amenable to certification. Thus, the Parties had set positions on the
28 propriety of certifiability and liability that did not admit of an easy resolution.

1 56. Finally, it is always preferable to reach a relatively early resolution of a dispute
2 because, in addition to what has already been said, such resolutions save time and money that
3 would otherwise go to litigation. In light of the risk and expense of the lawsuit and proceeding to
4 trial there was a need to resolve this matter soon than later. Most cases settle sooner or later. If
5 this case settled after further litigation, the settlement amount would have taken into account the
6 additional costs incurred, and there might have been less available for Class Members after all
7 was said and done. This is not just an abstract contention. The Parties were moving into the phase
8 of this litigation where they would have had to depose a number of people such as managers,
9 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
10 been in the offing. The Parties were also aware that a class action trial would be a complicated
11 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
12 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
13 benefits are not insignificant for anyone, especially given the current economic climate.
14 Consequently, the risk and expense of further litigation outweighed any benefit that might have
15 been gained otherwise.

16 **NOTICE TO AND REACTION OF CLASS MEMBERS**
17 **TO THE PROPOSED SETTLEMENT**

18 57. It is premature to address this factor now, at the preliminary approval stage; however,
19 some observations are in order. First, the notification procedure set out in the Settlement
20 Agreement provides the greatest likelihood that each and every Class Member will receive the
21 Notice of Class Action Settlement (“Class Notice”), attached to the Settlement Agreement as
22 **Exhibit A**. Under the Settlement Agreement, the Settlement Administrator will send the Class
23 Notice to each Class Member via First Class U.S. mail. (Exh. 1, ¶ 7.4.2.) Before mailing, the
24 Settlement Administrator will perform a search based on the National Change of Address
25 Database for information to update and correct for any known or identifiable address changes.
26 (*Id.*) If a new address is obtained by way of a returned Class Notice, then the Settlement
27 Administrator will promptly forward the original Class Notice to the updated address via first-
28 class regular U.S. mail. (Exh. 1, ¶ 7.4.3.) Thus, most, if not all, Class Members will likely receive

1 the Class Notice.

2 58. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
3 claims involved, the terms of the settlement, and their options thereunder. They provide for a
4 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
5 The efforts taken to ensure that Class Members receive the Class Notice and are well informed
6 about the settlement augur a favorable response rate.

7 59. If a Class Member disputes the number of workweeks stated for that Class Member in
8 the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter
9 by submitting in writing under penalty of perjury the workweeks that the Class Member claims to
10 have actually worked for Defendant during the Class Period. (Exh. 1, ¶ 7.6.) Defendant's records
11 shall have a rebuttable presumption of correctness. After consultation with Class Counsel and
12 Defendant's Counsel, the Settlement Administrator will make a determination of the Class
13 Member's total workweeks during the applicable period. *Id.*

14 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

15 60. The foregoing discussion establishes the fairness of the class-action settlement in the
16 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
17 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
18 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
19 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
20 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal
21 uncertainty. From Class Counsel's substantial experience with wage-and-hour class action
22 lawsuits Class Counsel believe that this case could not have settled on better terms under the
23 circumstances.

24 **REQUEST FOR ATTORNEYS' FEES**

25 61. Under the Settlement, Class Counsel will seek a Class Counsel Fees Payment of no
26 more than \$216,666.66 (up to one-third of the Gross Settlement Amount) and a reasonable Class
27 Counsel Litigation Expenses Payment not to exceed \$25,000.00, subject to approval by the Court.
28 (Exh. 1, ¶ 3.2.2.) Defendant will not oppose Class Counsel's fees and cost request. This request is

1 fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put
2 into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys'
3 fees award is intended to reimburse Class Counsel for all uncompensated work that they have
4 already done and for all the work they will continue to do in carrying out and overseeing the
5 notification to Class Members, communicating with Class Members regarding their claims, and
6 assisting in the administration of the settlement if it is preliminarily approved.

7 62. D.Law, Inc. took this case on a contingent-fee basis against a business represented by a
8 reputable defense firm. When we take contingent cases, we must pay careful attention to the
9 economics involved or one bad case can destroy years of work. Accordingly, when we take
10 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
11 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
12 number of hours in a day is limited. Because of this, when we take on one particular matter, we
13 are unable to take on other matters. In sum, this case claimed a significant portion of Class
14 Counsel's time and attention throughout its pendency.

15 63. The requested fee is reasonable for the services provided to Class Members and for the
16 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
17 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would
18 still be justified. Class Counsel will more fully brief the Court on its lodestar in the motion for
19 final approval.

20 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

21 64. Plaintiff herein is entitled to a reasonable service payment for her efforts and initiative
22 in bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time
23 better apprising herself of her rights, deciding whether remedial action should be taken, how it
24 should be taken, searching for attorneys, and finally contacting Class Counsel, who spent many
25 hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not
26 only her own rights but also those of her co-workers by filing a class action lawsuit.

27 65. The courage it took to stand up to Defendant by filing and litigating this action in this
28 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation

1 by prospective employers.

2 66. But Plaintiff did not allow her fears of the potential repercussions of being class
3 representative deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
4 has been intimately involved in this case since its inception. She has devoted a substantial amount
5 of time to helping Class Counsel effectively develop and prosecute this action at every stage of
6 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class
7 Counsel to discuss every aspect of her case. Plaintiff provided Class Counsel with information
8 about Defendant and about the industry generally, reviewed documents, identified witnesses,
9 consulted Class Counsel throughout the litigation repeatedly and at length, participated in the
10 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
11 signed the Settlement Agreement.

12 67. Plaintiff has spent a significant amount of time with Class Counsel detailing her
13 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
14 action. She has diligently, adequately, and fairly represented Class Members, and has not placed
15 her interests above any member of the putative class. The payment to Plaintiff is intended to
16 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate
17 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by
18 bringing these violations to the attention of Class Counsel. She spent several hours answering
19 questions and providing information to Class Counsel throughout the pendency of this action. She
20 identified witnesses, explained to Class Counsel day to day business practices of Defendant with
21 regard to work schedules, etc. The Parties are in agreement that Plaintiff is entitled to an
22 enhancement for her time and effort in this matter. This sort of payment to a class representative
23 has been a common feature of settlements negotiated by Class Counsel and has been routinely
24 approved by trial courts.

25 68. In light of the foregoing, Class Counsel believes that the Class Representative Service
26 Payment in the amount of \$5,000.00 to Plaintiff is fair and reasonable. This amount is a far cry
27 from the \$50,000 of enhancement awards to the two named plaintiffs approved by the trial court
28 in *Clark*. See *Clark, supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate that the

1 Court has a duty to ensure that class representatives are not overcompensated at the expense of
2 the class, modest incentive awards in employment class actions, such as the one here, are
3 necessary not only to compensate class representatives for the time they spend in the case, but
4 also, and more importantly, to encourage aggrieved employees to challenge questionable
5 employment practices notwithstanding the very real consequences they may face.

6 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

7 69. The proposed Class satisfies the criteria for certification of a settlement class under
8 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to
9 the certification of the class for settlement purposes. In general, courts may take a proposed
10 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*
11 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in
12 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
13 consideration the fact that the parties have settled their claims and stipulated to certification for
14 settlement purposes when assessing typicality and adequacy.

15 a. Numerosity. The putative class is so numerous that joinder of all members is
16 impractical. Class Members are all persons employed by Defendant in California and classified as
17 non-exempt hourly employee who worked for Defendant during the Class Period from July 19,
18 2019 through July 21, 2024. Documents and information exchanged between the Parties reflect a
19 class of approximately 235 Class Members and 175 Aggrieved Employees. Thus, there are a
20 sufficient number of Class Members to warrant certifying this as a class action for settlement
21 purposes.

22 b. Ascertainability. The putative class is defined in a manner that is precise,
23 objective, and ascertainable. The Class Members have already been identified by reference to
24 Defendant’s payroll and personnel records.

25 c. Typicality. A class representative’s claims are typical when they arise from the
26 same event, practice, or course of conduct that gives rise to the claims of other putative class
27 members, and if their claims rest on the same legal theories. The class representative’s claims
28 must be “typical” but not necessarily identical to the claims of other class members. It is

1 sufficient that the representative is similarly situated so that he or she will have the motive to
2 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
3 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been
4 the law in California that the class representative must have identical interests with the class
5 members.”). Thus, it is not necessary that the class representative should have personally incurred
6 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
7 (2001) 91 Cal.App.4th 224, 228.

8 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same
9 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant
10 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
11 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central
12 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to
13 provide meal and rest periods etc.) apply to the other Class Members as well, and the answer to
14 these questions would determine Defendant’s liability to the entire putative class. Accordingly,
15 the typicality requirement is satisfied.

16 d. Adequacy. A class representative must possess the same interest and suffer the
17 same injury as the class members. “To assure ‘adequate’ representation, the class representative’s
18 personal claim must not be inconsistent with the claims of other members of the class.” *J.P.*
19 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
20 the adequacy requirement is satisfied when the class representative’s interests are not antagonistic
21 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

22 Plaintiff has no conflicts with the class and in fact her interests are aligned with those of
23 the class. Because Plaintiff’s claims are identical to those that would be asserted by the unnamed
24 Class Members were they before the Court, Plaintiff has every interest in zealously representing
25 the unnamed Class Members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff
26 has devoted a substantial amount of time and energy to litigating this action and effecting a
27 settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour
28 litigation, especially class actions, and have zealously represented the interests of the class in

1 litigating this case. *See infra* ¶¶ 3-9. Accordingly, the adequacy requirement is satisfied.

2 e. Commonality. Common questions of law or fact in this case predominate over
3 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged
4 failure to pay minimum wages and overtime, failure to pay all wages due to allegedly common
5 and unlawful policies, failure to provide meal and rest periods, the resulting failure to pay final
6 wages when required, the failure to provide accurate paystubs, failure to keep required payroll
7 records, failure to pay employees on a timely basis, failure to reimburse necessary business
8 expenses, and largely derivative claims under the Business & Professions Code and PAGA.
9 Plaintiff contends these practices, including the alleged failure to provide corresponding premium
10 payments, affected Class Members in the same way. All Class Members were employed during
11 the Class Period. Therefore, the operative complaint delineates a common course of conduct
12 applicable to all Class Members.

13 f. Predominance. Individualized issues do not predominate over the issues of law and
14 fact that are common to the class as a whole. The principal issues of controversy are whether
15 Class Members were paid for all hours worked and provided lawful meal and rest breaks. As
16 explained, *supra*, there are common issues of law and fact given that Plaintiff and all Class
17 Members were subjected to the same policies and pay practices during the relevant time period.
18 Plaintiff and Class Members seek meal and rest break premiums, unpaid wages and overtime, and
19 penalties for work performed as non-exempt hourly employees for Defendant. These issues are
20 suitable for common adjudication because all Class Members were subject to the same
21 employment policies and Plaintiff contends the practices applied uniformly to all Class Members.

22 g. Superiority. Class resolution is superior to other available methods for the fair and
23 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
24 individually control the prosecution of separate actions. Although the injury resulting from
25 Defendant's policies and practices are real and significant, the cost of individually litigating each
26 such case against Defendant would easily exceed the value of any relief that could be obtained by
27 any one Class Member individually. If Class Members are forced to litigate their claims
28 individually this would result in about 235 individual actions against Defendant. Here, the

1 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
2 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
3 dwarf a potential recovery.

4 h. San Diego County is a compelling forum for this action given that Defendant's
5 location is in San Diego County and numerous Class Members work in this County.

6 i. There are no serious manageability difficulties presented by preliminarily
7 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
8 that would remain is claims administration and responding to possible objectors.

9 70. On July 10, 2025, Plaintiff submitted the Settlement Agreement and this Motion to the
10 LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as

11 **Exhibit 3.**

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

14 Executed this 10th of July, 2025, at Glendale, California.

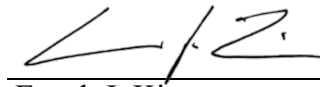
15 
16 _____
Enoch J. Kim

EXHIBIT 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JENNIFER REYES, on behalf of herself
and others similarly situated,

Plaintiff,

vs.

RESONETICS, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00041280-CU-OE-CTL

Assigned for All Purposes To:
Hon. Joel R. Wohlfeil
Dept.: C-73

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

Original Complaint filed: September 21, 2023

Trial Date: February 6, 2026

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1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Jennifer Reyes (“Plaintiff”) and Resonetics, LLC (“Defendant”). The
3 Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

4 1. **DEFINITIONS.**

5 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
6 Defendant captioned *Jennifer Reyes v. Resonetics, LLC*, No. 37-2023-00041280-CU-OE-CTL,
7 filed on September 21, 2023, in San Diego County Superior Court.

8 1.2 “Administrator” means Apex the neutral entity the Parties have agreed to appoint to
9 administer the Settlement.

10 1.3 “Administration Costs” means the amount the Administrator will be paid from the Gross
11 Settlement Amount to reimburse its reasonable fees and expenses in accordance with the
12 Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary
13 Approval of the Settlement.

14 1.4 “Aggrieved Employee” means and includes all individuals who were or have been
15 employed by Defendant in California as non-exempt employees at any time during the PAGA
16 Period.

17 1.5 “Class” means all persons employed by Defendant in California and classified as non-
18 exempt hourly employee who worked for Defendant during the Class Period.

19 1.6 “Class Counsel” means D.LAW, INC.

20 1.7 “Class Counsel Fees Payment” means an award of attorneys’ fees granted to Class
21 Counsel and paid from the Gross Settlement Amount (“GSA”). The Parties have agreed Plaintiff
22 will request approval from the Court of up to one-third (1/3) of the GSA or \$216,666.66 (two
23 hundred sixteen thousand six hundred sixty-six dollars and sixty-six cents).

24 1.8 “Class Counsel Litigation Expenses Payment” means the amount allocated to Class
25 Counsel for reimbursement of reasonable expenses and costs incurred to prosecute the Action,
26 not to exceed \$25,000.00 (twenty-five thousand dollars and zero cents) and paid from the Gross
27 Settlement Amount.

1.9 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, email address, phone number, and number of Workweeks and PAGA Pay Periods.

1.10 “Class Member” or “Settlement 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.

1.12 “Class Notice” means the Court approved Notice of Settlement and hearing date for Final 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” or “Class Settlement Period” means the period from July 19, 2019 through July 21, 2024. (“Settlement Class Period”).

1.14 “Class Representative” means the named Plaintiff Jennifer Reyes in the Action seeking Court approval to serve as a Class Representative.

1.15 “Class Representative Service Payment” or “Enhancement Award” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.16 “Court” means the Superior Court of California, County of San Diego.

1.17 “Defendant” means named Defendant Resonetics, LLC.

1.18 “Defense Counsel” means Constangy, Brooks, Smith & Prophete, LLP.

1.19 “Effective Date” means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for

filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.20 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.22 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.23 “Gross Settlement Amount” or “GSA” means \$650,000.00 (six hundred fifty thousand dollars with zero cents), which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below.

1.24 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.25 “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.

1.26 “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.27 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.28 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.29 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.30 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.31 "Operative Complaint" means the First Amended Complaint filed in the Action on October 8, 2024.

1.32 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.33 "PAGA Period" means the period from July 19, 2022 through July 21, 2024.

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

1.35 "PAGA Notice" means Plaintiff Reyes' July 19, 2023 letter to LWDA and the Defendant providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.36 "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, equal to \$65,000.00, and allocated 25% to the Aggrieved Employees (\$16,250.00) and 75% to LWDA (\$48,750.00) in settlement of PAGA claims.

1.37 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.38 "Plaintiff" means Jennifer Reyes, the named plaintiff in the Action.

1.39 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.40 "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.41 "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.42 "Released Parties" means: Defendant and all of Defendant's subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, owners, and assigns.

1.43 "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.

1.44 "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice packets are resent after

1 having been returned undeliverable to the Administrator shall have an additional fourteen (14)
2 calendar days beyond the Response Deadline has expired.

3 1.45 “Settlement” means the disposition of the Action effected by this Agreement and the
4 Judgment.

5 1.46 “Workweek” means any week during which a Class Member worked for Defendant for
6 at least one day, during the Class Period.

7 2. **RECITALS.**

8 2.1 On July 19, 2023, Plaintiff Reyes filed a Class Action Complaint alleging causes of
9 action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
10 Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4)
11 Rest-Break Liability Under Labor Code § 226.7; (5) Reimbursement of Necessary Expenditures
12 Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Failure to Keep Required
13 Payroll Records under Labor Code §§ 1174 and 1174.5; (8) Penalties Pursuant to Labor Code §
14 203; (9) Violation of Business & Professions Code § 17200 *et seq.*; and (10) Failure to Make
15 Proper Disclosure in Violation of the FCRA. On July 19, 2023, pursuant to Labor Code §2699.3,
16 subd.(a), Plaintiff Reyes gave timely notice to the LWDA and Defendant that Plaintiff Reyes
17 intended to proceed with a representative action under PAGA (LWDA-CM-969517-23). On
18 August 23, 2023, Defendant filed its notice of removal. As a result, Plaintiff filed a PAGA
19 Representative Action on September 21, 2023 for penalties under PAGA for: (1) Failure to Pay
20 Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal
21 Period Liability under Labor Code § 226.7; (4) Rest Break Liability under Labor Code § 226.7;
22 (5) Reimbursement of Necessary Business Expenditures; (6) Violation of Labor Code §§ 226(a)
23 and 1174; and (7) Violation of Labor Code §§ 203 and 204. Pursuant to the terms of the
24 Settlement, the Parties filed a Joint Stipulation on September 12, 2024 to file a First Amended
25 Class Action Complaint in San Diego County Superior Court alleging the same ten causes of
26 action in the July 19, 2023 complaint and an eleventh cause of action for penalties pursuant to
27 Labor Code § 2699, *et seq.*
28

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

2.3 On May 23, 2024, the Parties participated in an all-day mediation presided over by Mediator Gail A. Glick and were able to reach an agreement on general settlement terms. The Parties memorialized their agreement in a Memorandum of Understanding on July 11, 2024.

2.4 In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including speaking to current and former employees of Defendant regarding Defendant's employment policies and practices. Prior to mediation, Plaintiff also obtained and analyzed a representative sampling of time and payroll data for Class Members and the necessary policy documents through informal discovery to properly evaluate the strengths and weakness of the claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5 The Court has not granted class certification because the Parties engaged in mediation before any class certification.

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

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant will pay \$650,000 (six hundred fifty thousand dollars with zero cents) to fully settle, resolve, and extinguish all claims asserted in the Action, including without limitation all claims asserted in the PAGA Notice. The GSA is non-reversionary and does not include employer payroll taxes owed on the wage portions of the Individual Class Payments, which Defendant will pay separately.

1 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct
2 the following payments from the GSA, in the amounts specified by the Court in the Final
3 Approval:

4 3.2.1 To Plaintiff: A payment for the Class Representative Service Payment to the Class
5 Representative, Jennifer Reyes, of not more than \$5,000.00 (five thousand dollars) in addition to
6 any Individual Class Payment and any Individual PAGA Payment the Class Representative is
7 entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request
8 for a Class Representative Service Payment that does not exceed this amount. As part of the
9 motion for the Class Counsel Fees and Litigation Expenses Payments, Plaintiff will seek Court
10 approval for any Class Representative Service Payment no later than 16 (sixteen) court days prior
11 to the Final Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class
12 Representative Service Payment less than the amount requested, the Administrator will retain the
13 remainder in the Net Settlement Amount to be distributed to Participating Class Members. The
14 Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff
15 assumes full responsibility and liability for employee taxes owed on the Class Representative
16 Service Payment.

17 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3)
18 of the GSA, which is currently estimated to be \$216,666.66 (two hundred sixteen thousand six
19 hundred sixty-six dollars and sixty-six cents) and a Class Counsel Litigation Expenses Payment
20 for actual costs, not to exceed \$25,000.00 (twenty-five thousand dollars with zero cents).
21 Defendant will not oppose requests for these payments. Plaintiff and/or Class Counsel will file a
22 motion for Class Counsel Fees and Litigation Expenses Payment no later than 16 (sixteen) court
23 days prior to the Final Approval Hearing, or as otherwise ordered by the Court. If the Court
24 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment
25 less than the amounts requested, the Administrator will allocate the remainder to the Net
26 Settlement Amount for distribution to Participating Class Members. Released Parties shall have
27 no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any portion
28 of 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

1 using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for
2 taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
3 Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or
4 controversy regarding any division or sharing of any of these Payments.

5 3.2.3 To the Administrator: An Administrator Costs Payment not to exceed \$7,900 (Seven
6 Thousand Nine Hundred Dollars) except for a showing of good cause and as approved by the
7 Court. To the extent the Administration Costs are less or the Court approves payment of less than
8 \$7,900, the Administrator will retain the remainder in the Net Settlement Amount to be distributed
9 to Participating Class Members.

10 3.2.4 To Each Participating Class Member: An Individual Class Payment is calculated by
11 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
12 Participating Class Members during the Class Period, and (b) multiplying the result by each
13 individual Participating Class Member's Workweeks.

14 3.2.4.1 Tax Allocation of Individual Class Payments. Twenty percent (20%) of
15 each Participating Class Member's Individual Class Payment will be allocated to the Settlement
16 of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be
17 reported on an IRS W-2 Form. The remaining eighty percent (80%) of each Participating Class
18 Member's Individual Class Payment will be allocated to the settlement of claims for interest and
19 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
20 withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
21 responsibility and liability for any employee taxes owed on their Individual Class Payment.

22 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual
23 Class Payments. Non-Participating Class Members will not receive any Individual Class
24 Payments. The Administrator will retain amounts equal to their Individual Class Payments in the
25 Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.

26 3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
27 \$65,000.00 (sixty-five thousand dollars and zero cents) to be paid from the Gross Settlement
28 Amount, with 75% (\$48,750.00) allocated to the LWDA PAGA Payment and 25% (\$16,250.00)
allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$16,250.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant represents there are **235** Class Members who collectively worked a total of **18,927** workweeks during the Class Period, and **175** Aggrieved Employees who worked a total of **5,149** PAGA Pay Periods during the PAGA Period.

4.2 Class Data. Not later than twenty (20) 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.

1 4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
2 Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting
3 the funds to the Administrator no later than 14 (fourteen) days after the Effective Date.

4 4.4 Payments from the Gross Settlement Amount. Within 14 (fourteen) days after Defendant
5 fully funds the GSA, the Administrator will mail checks for all Individual Class Payments, all
6 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Costs Payment, the
7 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
8 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
9 Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not
10 precede disbursement of Individual Class Payments and Individual PAGA Payments.

11 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or
12 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The
13 face of each check shall prominently state the date (180 days after the date of mailing) when the
14 check will be voided ("Void Date"). The Administrator will cancel all checks not cashed by the
15 Void Date. The Administrator will send checks for Individual Settlement Payments to all
16 Participating Class Members (including those for whom the Class Notice was returned
17 undelivered). The Administrator will send checks for Individual PAGA Payments to all
18 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
19 Employees (including those for whom Class Notice was returned undelivered). The Administrator
20 may send Participating Class Members a single check combining the Individual Class Payment
21 and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator
22 must update the recipients' mailing addresses using the National Change of Address Database.

23 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class
24 Members whose checks are returned undelivered without USPS forwarding address. Within seven
25 (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS
26 forwarding address provided or to an address ascertained through the Class Member Address
27 Search. The Administrator need not take further steps to deliver checks to Class Members whose
28 re-mailed checks are returned as undelivered. The Administrator shall promptly send a

1 replacement check to any Class Member whose original check was lost or misplaced, requested
2 by the Class Member prior to the void date.

3 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA
4 Payment check is uncashed and canceled after the void date, the Administrator shall transmit the
5 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
6 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
7 California Code of Civil Procedure Section 384, subd. (b). In the event the funds are not claimed
8 within the required timeframe, such unclaimed and uncashed funds shall be offered and
9 transmitted to the non-profit agency Casa Cornelia Law Center.

10 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall
11 not obligate Defendant to confer any additional benefits or make any additional payments to Class
12 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

17 5.1 **Plaintiff's Release.** Plaintiff and Plaintiff's respective former and present spouses,
18 representatives, agents, heirs, administrators, successors, and assigns generally, releases and
19 discharges Released Parties from all claims, transactions, or occurrences, that occurred during the
20 Class Period and through the date of execution of this Agreement, including all claims that were,
21 or reasonably could have been, alleged, based on the facts contained in the Operative Complaint;
22 and claims under the Fair Employment and Housing Act, Americans with Disabilities Act, Title
23 VII of the Civil Rights Act of 1964, the California Labor Code, claims for wrongful termination
24 of public policy, retaliation and other tort and/or negligence based claims, claims for breach of
25 contract or other contractual-based claims, and all equivalent claims under local, state and/or
26 federal law ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
27 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
28 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts

1 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
2 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
3 notwithstanding such different or additional facts or Plaintiff's discovery of them.

4 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
5 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
6 and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

11 5.2 Released Class Claims: All Participating Class Members, on behalf of themselves and
12 their respective former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, release the Released Parties from those claims alleged or which could
14 have reasonably could have been alleged based on the facts in the Operative Complaint that arose
15 during the Class Period (the "Released Class Claims"). Except as set forth in Paragraph 5.3 of
16 this Agreement, Participating Class Members do not release any other claims, including claims
17 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
18 unemployment insurance, disability, social security, workers' compensation, or claims based on
19 facts occurring outside the Class Period.

20 5.3 Released PAGA Claims: All Aggrieved Employees, including Non-Participating Class
21 Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their
22 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
23 and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or
24 reasonably could have been alleged, based on the facts stated in the Operative Complaint and the
25 PAGA Notice ("Released PAGA Claims"). The Released PAGA claims applies to claims arising
26 during the PAGA Period only.

27 6. **MOTION FOR PRELIMINARY APPROVAL**. Plaintiff will prepare and file a motion for
28 preliminary approval ("Motion for Preliminary Approval").

1 6.1 Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining
2 Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the
3 Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*
4 and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2));
5 (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement;
6 (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness
7 and competency to serve and disclosing all facts relevant to any actual or potential conflicts of
8 interest with Class Members, and/or the Administrator; (v) a signed declaration from Class
9 Counsel firm attesting to its competency to represent the Class Members; its timely transmission
10 to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section
11 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement
12 (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential
13 conflict of interest with Class Members, and/or the Administrator.

14 6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
15 for expeditiously finalizing the Motion for Preliminary Approval. Class Counsel will obtain a
16 prompt hearing date for the Motion for Preliminary Approval, file the Motion for Preliminary
17 Approval no later than 16 (sixteen) court days before the hearing, unless otherwise ordered by the
18 Court, and deliver the Court's Preliminary Approval Order to the Administrator.

19 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
20 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
21 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
22 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
23 Preliminary Approval or conditions Preliminary Approval on any material change to this
24 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
25 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
26 otherwise satisfy the Court's concerns.

27 **7. SETTLEMENT ADMINISTRATION.**

28 7.1 Selection of Administrator. The Parties have jointly selected Apex to serve as the
Administrator and verified that, as a condition of appointment, the Administrator agrees to be

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

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

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1 for the funding of the GSA. Any interest that accrues on the GSA sums paid into the QSF prior to distribution by the Administrator will become part of the NSA for distribution to Participating Class Members.

7.4 Notice to Class Members.

7.4.1 No later than five (5) calendar 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, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 (fourteen) 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 used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than five (5) calendar days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class

1 Notice to the most current address obtained. The Administrator has no obligation to make further
2 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
3 USPS a second time.

4 7.4.4 The deadlines for Class Members' written objections, challenges to Workweeks
5 and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen days (14)
6 days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members
7 whose notice is re-mailed. The Administrator will inform the Class Member of the extended
8 deadline with the re-mailed Class Notice.

9 7.4.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise
10 discovers any persons who believe they should have been included in the Class Data and should
11 have received Class Notice, the Parties will expeditiously meet and confer in person or by
12 telephone, and in good faith in an effort to agree on whether to include them as Class Members.
13 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
14 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
15 requiring them to exercise options under this Agreement not later than 14 (fourteen) days after
16 receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

17 7.5 Requests for Exclusion (Opt-Outs).

18 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement
19 must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not
20 later than 30 (thirty) days after the Administrator mails the Class Notice (plus an additional 14
21 (fourteen) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is
22 a letter from a Class Member or his/her representative that reasonably communicates the Class
23 Member's election to be excluded from the Settlement and includes the Class Member's name,
24 address and email address or telephone number. To be valid, a Request for Exclusion must be
25 timely faxed, emailed, or postmarked by the Response Deadline.

26 7.5.2 The Administrator may reject a Request for Exclusion as invalid if it fails to contain
27 all the information specified in the Class Notice. The Administrator may accept any Request for
28 Exclusion as valid only 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 shall notify Class Counsel and Defense Counsel of its pending evaluation of authenticity to allow counsel the opportunity to provide any additional information, if any, to assist in the evaluation. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 30 (thirty) days after the Administrator mails the Class Notice (plus an additional 14 (fourteen) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the

1 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
2 Administrator's determination of the challenges.

3 7.7 Objections to Settlement.

4 7.7.1 Only Participating Class Members may object to the class action components of the
5 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
6 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
7 Payment and/or Class Representative Service Payment.

8 7.7.2 Participating Class Members may send written objections to the Administrator, by
9 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
10 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
11 Participating Class Member who elects to send a written objection to the Administrator must do
12 so not later than 30 (thirty) days after the Administrator's mailing of the Class Notice (plus an
13 additional 14 (fourteen) days for Class Members whose Class Notice was re-mailed).

14 7.7.3 Non-Participating Class Members have no right to object to any of the class action
15 components of the Settlement.

16 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
17 performed or observed by the Administrator contained in this Agreement or otherwise.

18 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish,
19 maintain and use an internet website to post information of interest to Class Members including
20 the date, time and location for the Final Approval Hearing and copies of the Settlement
21 Agreement; Motion for Preliminary Approval; Preliminary Approval Order; Class Notice;
22 Motion for Final Approval; Motion for Class Counsel Fees Payment, Class Counsel Litigation
23 Expenses Payment and Class Representative Service Payment; the Final Approval Order; and the
24 Judgment. The Administrator will also maintain and monitor an email address and a toll-free
25 telephone number to receive Class Member calls, faxes and emails.

26 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
27 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later
28 than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the
Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names

1 and other identifying information of Class Members who have timely submitted valid Requests
2 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
3 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
4 Exclusion from Settlement submitted (whether valid or invalid).

5 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports
6 to Class Counsel and Defense Counsel that, among other things, tally the number of: Class
7 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether
8 valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods
9 received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA
10 Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment
11 of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and
12 objections received.

13 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to
14 address and make final decisions consistent with the terms of this Agreement on all Class Member
15 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision
16 shall be final and not appealable or otherwise susceptible to challenge.

17 7.8.5 Administrator’s Declaration. Not later than 14 (fourteen) days before the date by
18 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
19 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
20 for filing in Court attesting to its due diligence and compliance with all of its obligations under
21 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
22 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
23 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
24 number of written objections and attach the Exclusion List. The Administrator will supplement
25 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
26 for filing the Administrator’s declaration(s) in Court.

27 7.8.6 Final Report by Settlement Administrator. Within 10 (ten) days after the
28 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
Class Counsel and Defense Counsel with a final report detailing its disbursements by employee

identification number only of all payments made under this Agreement. At least 15 (fifteen) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendant represents there are **235** Class Members who collectively worked a total of **18,927** Workweeks during the Class Period, and **175** Aggrieved Employees who worked a total of **5,149** PAGA Pay during the PAGA Period. If, on final calculation, the total number of Workweeks is greater than 10% higher than 18,927 Workweeks (i.e. greater than 20,820), then the GSA will be proportionally increased by the Workweeks worked in excess of 20,820 by multiplying the excess Workweeks by the per Workweek value, or alternatively, and at Defendant's discretion, the time frame of the Class Period and PAGA Period will be limited so that they do not exceed the 10% increase. If this provision is triggered so as to increase the GSA, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision is implemented.

9. **DEFENDANT'S RIGHT TO WITHDRAW.** Defendant represents, as of the date of this Settlement Agreement, there are 235 Class Members. If the number of valid Requests for Exclusion identified in the Exclusion List is equal to or greater than 24, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be *void ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Costs incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 20 (twenty) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 (sixteen) court days before the calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file in

1 Court, a Motion for Final Approval of the Settlement that includes a request for approval of the
2 PAGA settlement under Labor Code section 2699, subd. (l); a Proposed Final Approval Order;
3 and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts
4 of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
5 Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and
6 in good faith, to resolve any disagreements concerning the Motion for Final Approval.

7 10.1 Response to Objections. Each Party retains the right to respond to any objection raised
8 by a Participating Class Member, including the right to file responsive documents in Court no
9 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
10 accepted by the Court.

11 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
12 Approval on any material change to the Settlement (including, but not limited to, the scope of
13 release to be granted by Class Members), the Parties will expeditiously work together in good
14 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
15 Approval. The Court's decision to award less than the amounts requested for the Class
16 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
17 Expenses Payment, and/or Administrator Costs Payment shall not constitute a material
18 modification to the Agreement within the meaning of this paragraph.

19 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
20 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
21 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
22 and (iii) addressing such post-Judgment matters as are permitted by law.

23 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
24 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
25 Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective
26 counsel, and all Participating Class Members who did not object to the Settlement as provided in
27 this Agreement, waive all rights to appeal from the Judgment, including all rights to post-
28 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

1 right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties'
2 obligations to perform under this Agreement will be suspended until such time as the appeal is
3 finally resolved and the Judgment becomes final, except as to matters that do not affect the amount
4 of the Net Settlement Amount.

5 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
6 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
7 modification of this Agreement (including, but not limited to, the scope of release to be granted
8 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
9 expeditiously work together in good faith to address the appellate court's concerns and to obtain
10 Final Approval and Entry of Judgment, sharing, on a 50-50 basis, any additional Administration
11 Costs reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the
12 Court's award of the Class Representative Service Payment or any payments to Class Counsel
13 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
14 as long as the Gross Settlement Amount remains unchanged.

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

18 12. ADDITIONAL PROVISIONS.

19 12.1 No Admission of Liability, Class Certification or Representative Manageability for
20 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
21 claims. Nothing in this Agreement is intended or should be construed as an admission by
22 Defendant that any of the allegations in the Operative Complaint has merit or that Defendant has
23 any liability for any claims asserted; nor should it be intended or construed as an admission by
24 Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
25 certification and representative treatment is for purposes of this Settlement only. If, for any
26 reason, the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendant
27 reserves the right to contest certification of any class for any reason, Defendant reserves all
28 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
certification on any grounds available and to contest Defendant's defenses. The Settlement, this

1 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
2 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
3 Settlement and this Agreement).

4 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and
5 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
6 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
7 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
8 or indirectly, specifically or generally, to any person, corporation, association, government
9 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
10 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
11 extent necessary to report income to appropriate taxing authorities; (4) in response to a court order
12 or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government
13 agency. Each Party agrees to immediately notify the other Party of any judicial or agency order,
14 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense
15 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
16 communication, before the filing of the Motion for Preliminary Approval, with any third party
17 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
18 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
19 communications with Class Members in accordance with Class Counsel's ethical obligations
20 owed to Class Members.

21 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and
22 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
23 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability
24 to communicate with Class Members in accordance with Class Counsel's ethical obligations
25 owed to Class Members.

26 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
27 together with its attached exhibits shall constitute the entire agreement between the Parties
28 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
inducements made to or by any Party.

1 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
2 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
4 its terms, and to execute any other documents reasonably required to effectuate the terms of this
5 Agreement including any amendments to this Agreement.

6 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
7 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
8 Settlement Agreement, submitting supplemental evidence and supplementing points and
9 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
10 or content of any document necessary to implement the Settlement, or on any modification of the
11 Agreement that may become necessary to implement the Settlement, the Parties will seek the
12 assistance of a mediator and/or the Court for resolution.

13 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
14 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
16 action, or right released and discharged by the Party in this Settlement.

17 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
18 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
19 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
20 Part 10, as amended) or otherwise.

21 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
22 modified, changed, or waived only by an express written instrument signed by all Parties or their
23 representatives, and approved by the Court.

24 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure
25 to the benefit of, the successors of each of the Parties.

26 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the state of California, without
28 regard to conflict of law principles.

1 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
2 of this Agreement. This Agreement will not be construed against any Party on the basis that the
3 Party was the drafter or participated in the drafting.

4 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
5 entered during Action and in this Agreement relating to the confidentiality of information shall
6 survive the execution of this Agreement.

7 12.14 Headings. The descriptive heading of any section or paragraph of this Agreement is
8 inserted for convenience of reference only and does not constitute a part of this Agreement.

9 12.15 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
10 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
11 weekend or federal legal holiday, such date or deadline shall be on the first business day
12 thereafter.

13 12.16 Notice. All notices, demands, or other communications between the Parties in
14 connection with this Agreement will be in writing and deemed to have been duly given as of the
15 third business day after mailing by United States mail, or the day sent by email or messenger,
16 addressed as follows:

17
18 To Plaintiff:

19 D.LAW, INC.
20 Emil Davtyan
21 Emil@d.law
22 David Yeremian
23 david@yeremianlaw.com
24 Roman Shkodnik
25 r.shkodnik@d.law
26 Emma Geesaman
27 e.geesaman@d.law
28 450 N. Brand Blvd., Suite 840
 Glendale, CA 91203
 Telephone: (818) 962-6465
 Fax: (818) 962-6469

To Defendant:

 CONSTANGY, BROOKS, SMITH & PROPHETE, LLP
 Guillermo A. Escobedo (SBN 206198)
 gescobedo@constangy.com

Lana B. Nassar (SBN 332522)
lnassar@constangy.com
Lisa Xu (SBN 328700)
lxu@constangy.com
501 W. Broadway, Suite 800
San Diego, CA 92101
Telephone: (619) 605-6171

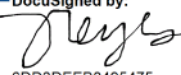
12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same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

12.18 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 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.

IT IS SO AGREED.

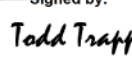
By the Parties:

DATED: 3/18/2025 _____

DocuSigned by:

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Plaintiff JENNIFER REYES

DATED: 3/20/2025 _____

Signed by:

F253E80900594FB...

Defendant RESONETICS, LLC

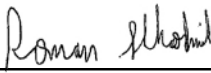
By: Todd Trapp _____

Position: CFO _____

1 Approved by counsel:

2 DATED: March 18, 2025

D.LAW, INC.

3
4 BY: 

David Yeremian

Roman Shkodnik

Emma Geesaman

Counsel for Plaintiff

8 DATED: March 20, 2025

CONSTANGY, BROOKS, SMITH & PROPHETE,
LLP

10
11 BY: 

Guillermo A. Escobedo

Lana B. Nassar

Lisa Xu

Attorneys for Defendant Resonetics, LLC

EXHIBIT A

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

Jennifer Reyes v. Resonetics, LLC Case No. 37-2023-00041280-CU-OE-CTL
(San Diego Superior Court)

***The San Diego County Superior Court authorized this notice.
It is not junk mail, spam, an advertisement, or solicitation by a lawyer.
Please read it carefully! You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Resonetics, LLC (“Defendant”) for alleged wage and hour violations. The Action was filed by former employee, Jennifer Reyes, and seeks payment of (1) back wages and other relief for a class of non-exempt or hourly-paid employees (“Class Members”) who worked for Defendant during the Class Period (July 19, 2019 to July 21, 2024); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all Class Members who worked for Defendant during the PAGA Period (July 19, 2022 to July 21, 2024) (“Aggrieved Employees”)

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

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked _____ Workweeks during the Class Period and you worked _____ Pay Periods during the PAGA Period**. If you believe that you worked more during either period, you can submit a challenge by the deadline date.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you act or not act. **READ THIS NOTICE CAREFULLY**. You will be deemed to have read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

-1-

12257515v3

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Receive money. Give up rights to sue Defendant for claims released in the Settlement.
EXCLUDE YOURSELF	Receive no money from the Class settlement. You will retain the right to pursue your own legal claims against Defendant. However, even if you exclude yourself from the Class settlement, you will still receive a portion of the PAGA settlement and be bound by it if you worked during the PAGA Period.
OBJECT	Write to the Court about why you object to the Settlement. If the Settlement receives Final Approval, you will receive money and give up rights to sue Defendant for claims released in the Settlement.
CHALLENGE YOUR NUMBER OF WORKWEEKS AND/OR PAY PERIODS	Challenge your number of Workweeks or Pay Periods listed in this Notice and provide supporting evidence. If you challenge your workweeks or pay periods, you will still be part of the Settlement and will give up rights to sue Defendant for claims released in the Settlement.

BASIC INFORMATION

1. WHY AM I RECEIVING THIS NOTICE?

Defendant's records indicate that you worked for Resonetics, LLC at some point(s) between July 19, 2019 through July 21, 2024, and are therefore a member of the Class for purposes of this Settlement.

You received this Notice because you have a right to know about a proposed Settlement of the Action, and about all of your options, before the Court decides whether to finally approve the Settlement. The Settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys' General Act ("PAGA"). If you are a Class Member, you are also an "Aggrieved Employee" if you worked for Defendant during the "PAGA Period," which is July 19, 2022 through July 21, 2024.

If the Court grants Final Approval to the Settlement, a settlement Administrator appointed by the Court will issue the payments provided for by the Settlement to Class Members. You are encouraged to always keep your address up to date with the Administrator (the Administrator's contact information can be found in Section 12, below).

This Notice package explains the allegations and background regarding the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive those benefits.

The Court in charge of the Action is the San Diego Superior Court, and the case is titled, "*Jennifer Reyes v. Resonetics, LLC*", No. 37-2023-00041280-CU-OE-CTL. The person who sued, Jennifer, is the Plaintiff, and the company sued, Resonetics, LLC, is the Defendant.

2. WHAT IS THE LAWSUIT ABOUT?

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

-2-

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The Plaintiff in the lawsuit alleges wage and hour violations against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (8) Penalties Pursuant to Labor Code § 203; (9) Violation of Business & Professions Code § 17200 *et seq.*; and (10) Failure to Make Proper Disclosure in Violation of the FCRA. In addition, Plaintiff is seeking to recover civil penalties pursuant to PAGA (“PAGA Penalties”) based on the alleged violations of the California Labor Code listed above. Defendant denies Plaintiff’s claims and denies any wrongdoing.

3. WHY IS THIS A CLASS ACTION?

In an employment class action, one or more people called “Class Representatives” (in this case, the Plaintiff) sue on behalf of all workers who they contend have similar claims. All of these workers are a Class or Class Members. Bringing one lawsuit, as opposed to many small ones, saves money, time and court resources. The court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of the Plaintiff or Defendant on the merits of the claims alleged in the lawsuit. Plaintiff believes Plaintiff would win at trial. Defendant thinks that Plaintiff’s lawsuit would not proceed to a trial and/or that Plaintiff would not win at trial. However, there has been no trial. Instead, in acknowledgement of the risk that both Parties face should the case proceed, the Parties have agreed to a negotiated settlement. This way, all Parties avoid the cost of preparing for and conducting a trial, the risk of losing the right to a trial, and the workers affected by the alleged violations receive compensation. The Settlement represents a compromise and settlement of highly disputed claims. The Plaintiff, as well as Plaintiff’s lawyers (called “Class Counsel”), believes the Settlement is fair and reasonable and in the best interests of all Class Members.

WHO IS INCLUDED IN THE SETTLEMENT?

5. WHO IS INCLUDED IN THE SETTLEMENT?

If you received this Notice, you are a Class Member for settlement purposes. The Class includes: all persons employed by Defendant in California and classified as non-exempt hourly employee who worked for Defendant during the Class Period, which is from July 19, 2019 through July 21, 2024.

6. ARE THERE EXCEPTIONS TO BEING INCLUDED?

You are not a Class Member if you already have resolved the claims asserted in this lawsuit, whether by settlement or a separate legal proceeding (i.e., another lawsuit).

THE SETTLEMENT BENEFITS—WHAT YOU GET

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

-3-

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7. WHAT DOES THE SETTLEMENT PROVIDE?

Defendant has agreed to pay a Gross Settlement Amount (“GSA”) of \$650,000 (six hundred fifty thousand dollars with zero cents) to settle the lawsuit. From the GSA, Class Counsel will apply to the Court for attorneys’ fees of one-third of the GSA or \$216,666.67 and up to \$25,000.00 in costs; a Class Representative Service Payment of \$5,000.00 to Plaintiff (for Plaintiff’s work and efforts prosecuting this case); a PAGA Penalties payment of \$65,000.00 to resolve the PAGA claims; and Settlement Administration Costs to Apex not to exceed \$7,900.00. The exact amount of the Class Counsel’s Fees and Litigation Expenses, Class Representative Service Payment, and Administration Costs will be determined by the Court at the Final Approval hearing. The remaining portion of the Settlement amount, the “Net Settlement Amount” or the “NSA,” is currently estimated to be approximately **\$330,433.33**. The NSA will be apportioned and paid out as Individual Class Payments to the Settlement Class Members, who are the Class Members that do not request to be excluded (“opt out”) of the Settlement.

PAGA Penalties payment: As part of the PAGA portion of the Settlement, the Parties will ask the Court to approve a \$65,000.00 PAGA Penalties payment in settlement of claims for civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties payment, or \$48,750.00, will be paid to the California Labor and Workforce Development Agency. The remaining 25% of the PAGA Penalties payment, or \$16,250.00, will be distributed to the Aggrieved Employees as Individual PAGA Payments.

8. HOW MUCH WILL MY PAYMENT BE?

An approximation of your Individual Class Payment appears on the first page of this Notice. If you are also an Aggrieved Employee, an approximation of your Individual PAGA Payment will also appear on the first page of this Notice.

Individual Class Payment: Your Individual Class Payment is based on the number of Workweeks you worked, as represented in Defendant’s records, in comparison to the total number of Workweeks worked by all Class Members during the Class Period (July 19, 2019 to July 21, 2024). Eighty percent (80%) of each Class Member’s Individual Class Payment will be treated as a payment in settlement of the alleged claims for penalties and interest and will be reported on a Form 1099 by the Settlement Administrator, and twenty percent (20%) of each Class Member’s Individual Class Payment will be treated as a payment in settlement of alleged claims for unpaid wages. The 20% allocated as unpaid wages will be reduced by applicable payroll tax withholdings and deductions and reported on a Form W-2.

Individual PAGA Payment: If you worked for Defendant from July 19, 2022 to July 21, 2024 (“PAGA Period”), you are also an “Aggrieved Employee” and will receive an Individual PAGA Payment in addition to your Individual Class Payment. The Individual PAGA Payments are based on the number of PAGA Pay Periods worked by each Aggrieved Employee in comparison to the total amount of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. One hundred percent (100%) of each Aggrieved Employees’ Individual PAGA Payment will be characterized as penalties and will not be reduced by payroll tax withholdings and deductions. The Individual PAGA Payment will be reported on a Form 1099 by the Settlement Administrator. An approximation of your anticipated Individual PAGA Payment appears on the first page of this Notice.

For the Class Members who are also Aggrieved Employees, their Individual Class Payment will be combined with their Individual PAGA Payment, and they will receive a single check for the combined payments. If a Class Member chooses to opt-out of the Settlement, they will still receive an Individual PAGA Payment, as Aggrieved Employees cannot opt-out of the PAGA portion of the Settlement. *See, e.g., Robinson v So. County Oil*, 53 Cal. App. 476 (2020).

HOW YOU GET A PAYMENT

9. HOW DO I RECEIVE A PAYMENT?

You do not need to do anything to receive a payment. However, if you believe that the number of Workweeks or PAGA Pay Periods you worked is incorrect, please correct it and provide any supporting evidence to the Settlement Administrator, whose contact information is listed in Section 12 below.

10. WHEN WOULD I GET MY PAYMENT?

The Court will hold a Final Fairness Hearing on [REDACTED], to decide whether to approve the Settlement. If the Judge approves the Settlement, and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved and resolving them can take time. If there is no objection, the Effective Date of the Settlement will be the date of entry of the Court's Order granting final approval.

Following the Effective Date, Individual Class Payments and Individual PAGA Payments will be mailed to Participating Class Members and Aggrieved Employees approximately 30 days after the Court's approval of the Settlement becomes final so long as there are no appeals.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Participating Class Member and/or Aggrieved Employee who did not cash his or her settlement check. If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement. You can search for unclaimed property on the State's website at: https://www.sco.ca.gov/search_upd.html

For an update on the status of payments, please contact the Settlement Administrator (see Section 12).

11. WHAT AM I GIVING UP TO GET A PAYMENT?

If the Court approves this Settlement and unless you exclude yourself, you will become a Participating Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the legal claims being resolved in this Settlement. Specifically, you will be giving up or "releasing" the Released Class Claims described below against Defendant and all of Defendant's subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, owners, and assigns ("Released Parties"). The releases become effective once the GSA is fully funded by Defendant.

Released Class Claims: The “Released Class Claims” shall include all claims alleged or which could have reasonably could have been alleged based on the facts in the Operative Complaint that arose during the Class Period.

Released PAGA Claims: If you are an Aggrieved Employee (i.e., if you worked for Defendant during the PAGA Period), you will also release all claims for PAGA civil penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice (“Released PAGA Claims”). The Released PAGA Claims applies to claims arising during the PAGA Period only.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the Settlement, you must send the Settlement Administrator a written and signed request for exclusion which must be postmarked no later than 45 days after Class Notice is Mailed. Be sure to include your name, address, and telephone number, and any other information you think would be helpful to the settlement Administrator to identify you. You can send your request for exclusion to the settlement Administrator at:

[ADMINISTRATOR]
Jennifer Reyes v. Resonetics, LLC Settlement
XXXXX
City, State, XXXXX
Email:
Fax:

If you ask to be excluded from the Settlement, you will not be legally bound by anything that happens in the Action, except as it relates to settlement of the PAGA claim. If you ask to be excluded from the Settlement you will not be able to object to the Settlement and you will not receive an Individual Class Payment, but you will still receive an Individual PAGA Payment if you worked for Defendant during the PAGA Period (July 19, 2022 through July 21, 2024). If you ask to be excluded, you may be able to sue (or continue to sue) Defendant in the future.

13. IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANT FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is [45 days after Class Notice is Mailed].

14. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

QUESTIONS? CALL 1-800-XXX-XXXX TOLL FREE

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No. If you exclude yourself, you will not receive any money from this Settlement. However, if you timely exclude yourself from the Settlement, you will retain the right to pursue your own legal action against Defendant, if you desire.

THE LAWYERS REPRESENTING YOU IN THIS LAWSUIT

15. DO I HAVE A LAWYER IN THIS CASE?

The Court has determined that D.Law, Inc. is qualified to represent you and the Class Members in the lawsuit. These lawyers are called Class Counsel and their contact information is listed below. If you want to be represented by your own lawyer, you may hire one at your own expense.

D.LAW, INC.
Emil Davtyan
Emil@d.law
David Yeremian
d.yeremian@d.law
Roman Shkodnik
r.shkodnik@d.law
Emma Geesaman
e.geesaman@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

16. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to approve \$216,666.66 (or 1/3 of the GSA) for attorneys' fees incurred in investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel will also seek Court-approval of up to \$25,000.00 in litigation expenses incurred in this matter. The Court may award Class Counsel less than what they request. Class Counsel will also ask the Court to approve payment to Plaintiff Jennifer Reyes in the amount of \$5,000 in addition to Plaintiff's Individual Class Payment and Individual PAGA Payment for the initiative, risk, and time and energy Plaintiff has spent in service to the Class as the Class Representative. The Court may award the Class Representative less than what is requested.

OBJECTING TO THE SETTLEMENT

You can and have the right to tell the Court you do not agree with the Settlement or some part of it.

17. HOW DO I TELL THE COURT THAT I OBJECT TO THE SETTLEMENT?

If you don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection.

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

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Written objections and notices of intent to appear at the Final Approval Hearing must be mailed to the Settlement Administrator and postmarked on or before [REDACTED], 2025, at the following address:

[ADMINISTRATOR]
Jennifer Reyes v. Resonetics, LLC Settlement
XXXXX
City, State, XXXXX
Email:
Fax

The written objection should state your name and address and describe all legal and factual reasons that you object to the terms of the Settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the Final Approval hearing, the Settlement Agreement will be approved, and you will receive your payment. If you do not submit a written objection, you may still appear at the Final Approval hearing to voice your objection or to otherwise observe the proceedings.

18. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND REQUESTING EXCLUSION?

Objecting is simply telling the Court that you do not agree with something about the Settlement. You can object only if you stay in the Class.

Requesting exclusion is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you, and you do not get any money from this Settlement. If you submit both an objection and a request to be excluded from the settlement, the request to be excluded will control and you will not get any money from this settlement.

THE COURT'S FAIRNESS HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

19. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Final Approval Hearing at [REDACTED] on [REDACTED] in Department C-73 of the San Diego County Superior Court located at 330 W. Broadway, San Diego CA 92101, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court will also be asked to approve the requests for the Class Representative Service Payment and the Class Counsel Fees and Litigation Expenses Payments.

20. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Court may have. However, you are welcome to attend. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection to the settlement administrator on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

QUESTIONS? CALL 1-800-XXX-XXXX TOLL FREE

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IF YOU DO NOTHING

21. WHAT IF I DO NOTHING AT ALL?

If you do nothing, you will receive a Settlement payment, and you will be bound by the terms of Settlement, which means that you will not be able to start a lawsuit, continue a lawsuit, or be a part of any other lawsuit against the Defendant about the legal issues in the Action.

GETTING MORE INFORMATION

22. HOW DO I GET MORE INFORMATION?

You may contact Class Counsel at the contact information listed above in Section 15 if you have any questions about the Settlement. You may also contact the Court-appointed Settlement Administrator, [INSERT] by calling toll free 1-800 _____, or you can write to the Administrator at the following address:

[ADMINISTRATOR]
Jennifer Reyes v. Resonetics, LLC Settlement
XXXXX
City, State, XXXXX
Email:
Fax

PLEASE DO NOT TELEPHONE THE COURT OR RESORT AT INDIAN SPRINGS, LLC'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. YOU MAY, HOWEVER, CALL CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR, LISTED ABOVE.

QUESTIONS? CALL 1-800-XXX-XXXX TOLL FREE

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EXHIBIT 2

**DAVID YEREMIAN
& ASSOCIATES INC**

2540 FOOTHILL BLVD STE 201
LA CRESCENTA CA 91214

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

July 19, 2023

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Resonetics, LLC
44 Simon St.
Nashua, NH 03060
Certified Mail Tracking Number: 7021 2720 0001 0176 4095

National Registered Agents, Inc., Agent for Service
Resonetics, LLC
330 N. Brand Blvd, Ste 700
Glendale, CA 91203
Certified Mail Tracking Number: 7021 2720 0001 0176 4101

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Reyes v. Resonetics, LLC***

Gentlepersons:

This office represents Plaintiff Jennifer Reyes (“Plaintiff”) and other similarly situated aggrieved non-exempt employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Resonetics, LLC and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in San Diego Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The attached Class Action Complaint provides the details of Plaintiff's class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Specifically, Aggrieved Employees were not paid for the time that they worked "post-shift" without compensation by taking calls from supervisors and human resources representatives after clocking out. The uncompensated time included the time Aggrieved Employees worked off-the-clock during meal periods. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without compensation.

Defendants' timekeeping system for the beginning and ending times of their work shifts required Aggrieved Employees to clock in and clock out when they were starting and ending work for the day. The timekeeping system thus permitted Defendants to record clock in and clock out times to the real-time minute. However, rather than pay the Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the quarter hour (*i.e.*, to the nearest 15-minute time increment), and generally did so to the detriment of the Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, and taken

well after their fifth consecutive hour of work, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders.

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees who often worked at least twelve (12) hours in a day were entitled to at least two breaks but were required to work through their periods which they were continuously denied.

Defendants had a common policy and practice of failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cell phone and internet usage and other costs associated with working from home which were necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, discussed above.

Moreover, Defendants failed to pay Plaintiff and Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to

the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “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 attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked “post-shift” without compensation by taking calls from supervisors and human resources representatives after clocking out. The uncompensated time included the time Aggrieved Employees worked off-the-clock during meal periods. Accordingly, Plaintiff and Aggrieved Employees were required to work without pay. Defendant also had a common policy and/or practice of understating the hours worked by Aggrieved Employees because Defendant would round down Aggrieved Employees time to the nearest 15-minute time increment order to avoid paying them for all the hours worked. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully

unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above including the time they worked "post-shift" without compensation by taking calls from supervisors and human resources representatives after clocking out and time spent working while clocked out for meal breaks caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, as discussed above Defendants improperly rounded down to the nearest quarter hour, changed, adjusted and/or modified Plaintiff and Aggrieved Employees hours in order to avoid paying them for all hours worked as Plaintiff and Aggrieved Employees' timesheets reveal little variance between the hours worked by employees on a daily basis.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in

Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as

provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cost of cell phone and internet usage and other costs associated with working from home which were necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage

Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, rounding, overtime, premium pay for deficiently provided meal periods and rest breaks.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved

Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code §§ 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek

to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, *et seq.*

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq.*

Plaintiff's PAGA Claim under Labor Code § 2698 *et seq.* and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above

addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

(a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide Plaintiff and the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the

applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

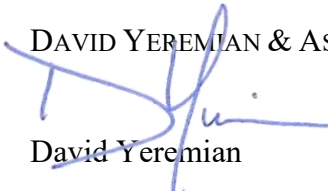
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Resonetics, LLC and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Resonetics, LLC by Certified Mail

EXHIBIT 3