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Attorneys for Plaintiff ANA LEMUS,  
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

ANA L. LEMUS, an individual, on behalf  
of herself and others similarly situated,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE  
COMPANY, an Ohio corporation; and  
DOES 1-50, inclusive,

Defendants.

Case No.: 23-CV-012222

**CLASS ACTION**

Assigned for All Purposes To:  
Hon. Lauri Damrell

**DECLARATION OF ENOCH J. KIM IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Date: May 23, 2025  
Time: 9:00 a.m.  
Dept.: 22

Original Complaint Filed: November 27, 2023  
First Amended Complaint Filed: April 11, 2025  
Trial Date: None Set

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1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Courts for the Central, Southern, Eastern and Northern Districts of California. I am Senior Counsel at D.Law, Inc. (“D.Law”), and attorney of record for Plaintiff ANA L. LEMUS (“Plaintiff” or “Class Representative”) on behalf of similarly situated employees of Defendant NATIONWIDE MUTUAL INSURANCE COMPANY (“Defendant”).

matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I submit this Declaration in support of the Motion for Preliminary Approval, filed by Plaintiff, on behalf of herself and other similarly situated employees of Defendant, and without opposition from Defendant, for preliminary approval of the parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"), a true and correct copy of which is attached hereto as **Exhibit 1**. I have reviewed the Court's "Checklist for Approval of Class Action and/or PAGA Settlements" and Local Rule 2.99.05 and submit that Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement complies with the Checklist.

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including class actions and PAGA actions on behalf of employees and others who have had their rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiff's counsel of record in numerous wage and hour and employment class action and PAGA action cases pending in both state and federal court.

Our firm is well-qualified and has ample experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative Class and aggrieved employees in this action. Our practice is exclusively focused on employment matters and representing plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

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

1 MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court of California in Los  
2 Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al. (Superior Court of  
3 California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of  
4 California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of  
5 California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court  
6 of California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior  
7 Court of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX  
8 Corporation dba IMAC Worldwide Home (Superior Court of California in San Bernardino,  
9 CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles,  
10 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-  
11 cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in  
12 Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in  
13 Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San  
14 Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of  
15 California in Alameda, HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior  
16 Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc.  
17 (Superior Court of California in San Bernardino, CIVDS1915743), Viridi v. Absolute Security  
18 International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First  
19 Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS),  
20 Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-  
21 00008179-CU-OE-NC), among others.

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

1 experience coming from the plaintiff's side representing employees and obtaining significant  
2 settlements on their behalf.

3 7. Attorney David Yeremian is Managing Attorney at D.Law and counsel of record for  
4 Plaintiff. Mr. Yeremian graduated from UC Berkeley in 1997 and received his law degree and  
5 MBA from UCLA in 2001. Mr. Yeremian has been honored as a Super Lawyers Rising Star in  
6 2009, 2010, 2012-2015 and has been named and honored as a Super Lawyer. Since 2007, Mr.  
7 Yeremian has focused exclusively on representing employees, including in wage-and-hour class  
8 actions. During his career, Mr. Yeremian has represented employees in hundreds of wage-and-  
9 hour class action lawsuits as lead or co-lead counsel (including in the Central, Southern, Eastern,  
10 and Northern Districts of California), and has obtained six and seven-figure settlements against a  
11 range of defendants, including Fortune 500 companies.

12 8. Attorney Alvin B. Lindsay is Senior Counsel at D.Law and counsel of record for  
13 Plaintiff. He graduated from the United States Military Academy at West Point and then served as  
14 an Army Officer for 10 years in the Corps of Engineers. He then earned his Juris Doctorate from  
15 Whittier Law School and has been practicing in California for over twenty years. Since 2010, he  
16 has exclusively focused his practice on representing employees including in wage-and-hour class  
17 actions. During his career, he has represented employees in many wage-and-hour class action  
18 lawsuits as lead or co-lead counsel (including in the Central, Southern, Eastern, and Northern  
19 Districts of California), and has been successful in getting many contested class action cases  
20 certified and has secured class and PAGA settlements for many millions of dollars against a range  
21 of defendants, including Fortune 500 companies. He is experienced and qualified to evaluate the  
22 class and representative claims, to evaluate settlement versus trial on a fully informed basis, and  
23 to evaluate the viability of the defenses.

24 9. The collective experience of the D.Law attorneys in litigating employment wage and  
25 hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses  
26 of a case, and generally negotiating fair and reasonable class and representative action  
27 settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge  
28 concerning the constantly evolving substantive law (state and federal), as well as the procedural

1 law of class and representative action litigation. In this action, the attorneys at D.Law are fully  
2 equipped to use the skills and knowledge developed over decades of prosecuting and defending  
3 wage and hour class actions to fairly and adequately represent the interests of the class members.  
4 Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law are well-  
5 qualified to act as class counsel and represent Plaintiff and the putative class members in this  
6 action.

7 10. The named Plaintiff worked as an hourly-paid, non-exempt employee for Defendant  
8 and Defendant is a large insurance and financial services company. For purposes of this motion,  
9 the “Class” or “Class Members” consist of all non-exempt employees based in California and  
10 employed by Defendant at any time from July 17, 2019, through April 14, 2025. I do not believe  
11 that I have any conflicts of interest with the Class or with the Class Representative. I am not  
12 related to the Class Representative. I have not previously represented Defendant in any matter. I  
13 respectfully submit that I, and D.Law are well suited to act as Class Counsel in this action, and we  
14 have and will continue to vigorously represent the interests of the Class Members.

### 15 **PROCEDURAL HISTORY**

16 11. On July 17, 2023, Plaintiff commenced a Class Action by filing a Complaint alleging  
17 causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay  
18 Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code §  
19 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226; (6)  
20 Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code §  
21 203; (9) Failure to Maintain Records Required Under Labor Code §§ 1174 and 1174.5; (10)  
22 Failure to Produce Requested Employment Records Under Labor Code §§ 226, 1198.5; (11)  
23 Failure to Reimburse Necessary Business Expenses § 2802; (12) Failure to Pay Vacation Wages  
24 in Violation of Labor Code § 227.3; (13) Violation of 15 U.S.C. §§ 1681 (b)(2)(A); (14)  
25 Violation of California Civil Code § 1786 *et seq.* (ICRAA); (15) Violation of Business &  
26 Professions Code § 17200 *et seq.* (Case No. 23CV004939) (the “Class Action”). Defendant  
27 subsequently removed the Class Action to the United States District Court for the Eastern District  
28 of California, where it remains pending at Case No. 2:23-cv-01871-DAD-SCR. Plaintiff contends

1 that Defendant failed to pay Class Members all wages due and owing, including by requiring off  
2 the clock work, failing to provide meal and rest breaks, failing to furnish accurate wage  
3 statements, failing to timely pay wages including final wages, failing to maintain accurate  
4 records, failing to reimburse necessary business expenses, failing to pay vacation wages, and  
5 conducting unlawful background checks.

6 12. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to  
7 Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending  
8 her PAGA Notice on July 17, 2023 (LWDA-CM-968842-23. A true and correct copy of the  
9 confirmatory email and the LWDA letter submitted on behalf of Plaintiff is attached hereto as  
10 **Exhibit 2**. The LWDA did not express an interest in investigating Plaintiff's claims within the  
11 65-day period. Therefore, on November 27, 2023, Plaintiff filed a PAGA Action Complaint  
12 alleging claims for civil penalties under Private Attorneys General Act based on the same  
13 predicate Labor Code violations as asserted in the Class Action (Case No. 23-CV-012222) ("the  
14 PAGA Action").

15 13. After reaching a global settlement at mediation that encompasses both actions, because  
16 of the overlap between the Class Action and PAGA Action, the Parties agreed to consolidate all  
17 of the claims and theories asserted in the Class Action and PAGA Action, and to seek approval of  
18 the Settlement in this Court. To that end, pursuant to the Settlement, on April 11, 2025, Plaintiff  
19 filed a First Amended Complaint in the PAGA Action adding the claims asserted in the Class  
20 Action, which is now the operative complaint in the PAGA Action ("Operative Complaint").

21 14. In addition to the Class Action and PAGA Settlement Agreement, the parties executed  
22 an individual settlement agreement and general release of any and all other individual claims that  
23 Plaintiff Ana Lemus may have against Defendant, including claims arising out of Plaintiff's  
24 involuntary termination from employment.<sup>1</sup>

### 25 **INVESTIGATION AND DISCOVERY**

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

28 <sup>1</sup> The amount of the individual agreement was \$80,000.

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 16. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts  
7 and claims giving rise to the action, including: (1) conducting informal discovery and meeting  
8 and conferring with defense counsel about the same; (2) reviewing and analyzing a 98.6%  
9 sampling of time and pay records as well as employment handbooks, Plaintiff's personnel file,  
10 relevant policies and other documentation applicable to the putative class members; (3)  
11 researching the applicable law and defenses asserted by Defendant; (4) constructing damage  
12 models based on interpretations of California law; and (5) reviewing information provided by  
13 Defendant at mediation including records for all Class Members for a period close to the date of  
14 the mediation. The Class enumerated in this action is ascertainable because the Class Members  
15 may be readily identified by reference to Defendant's records. Defendant has agreed to share the  
16 information from these records with the Settlement Administrator in order to identify and contact  
17 the Class Members. Defendant has represented that there are approximately 838 total Class  
18 Members.

19 17. Defendant, for its part, vigorously contested and continues to contest liability, the  
20 amount of claimed damages, and the propriety of class certification, and the manageability of the  
21 PAGA claims. After Class Counsel analyzed the relevant documents and other gathered data,  
22 Class Counsel believed that this case was appropriate for resolution via mediation.

23 18. On January 15, 2025, the parties attended a full-day mediation with Tripper Ortman,  
24 Esq., a respected and highly experienced mediator in wage and hour class actions. During  
25 mediation, Plaintiff's and Defendant's counsel discussed important aspects of the case, including  
26 the risks of litigation and the risks to both parties of proceeding with a motion for class  
27 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage  
28 statements, and final pay. As a result of the mediation, the parties agreed to settle the lawsuit

1 according to the terms set forth in the Settlement Agreement.

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

#### 12 **MATERIAL TERMS OF THE SETTLEMENT**

13 20. The parties have executed a Settlement Agreement attached hereto and incorporated  
14 herein as **Exhibit 1**. Under the terms of the proposed Settlement Agreement, Defendant has  
15 agreed to pay \$880,000.00 on a non-reversionary basis to settle and release all claims asserted by  
16 Plaintiffs in the Class Action and PAGA Action on behalf of the proposed Class. (Exh. 1,  
17 §§III(B), XIII(A).) Defendant has represented that, based on its records, as of April 14, 2025,  
18 Class Members worked a total of 122,071 Class Workweeks. Pursuant to the escalator clause of  
19 the Settlement, Defendant has elected to increase the Gross Settlement Amount based on the  
20 122,071 Class Workweeks worked through April 14, 2025, thereby resulting in a 0.9736 percent  
21 increase, such that the actual, increased Gross Settlement Amount Defendant will pay is  
22 \$888,568.00 on a non-reversionary basis ("Gross Settlement Amount").

23 21. The Settlement Agreement defines the "Class" as "all non-exempt employees based in  
24 California and employed by Nationwide at any time from July 17, 2019 through [...] April 14,  
25 2025." (Exh. 1, §I(A).) However, it does not include any person who submits a timely and valid  
26 request for exclusion. (Exh. 1, §VI(D).) "Class Period" means the period from July 17, 2019,  
27 through April 14, 2025. (Exh. 1, §I(A).) The Settlement Agreement also defines "PAGA  
28 Group" or "PAGA Group Members" as all persons who were classified as non-exempt and

1 employed in California at any time between September 23, 2022 and April 14, 2025 (“PAGA  
2 Period”). (Exh. 1, §I(F).)

3 22. The “Net Settlement Amount,” available for distribution to Class Members, shall be  
4 the Gross Settlement Amount, less the Class Counsel Attorneys’ Fees Payment, Class Counsel  
5 Litigation Costs Payment, Class Representative Enhancement Payment, Settlement  
6 Administration Costs Payment, and the PAGA Settlement Amount. (Exh. 1, §IV(G).) These  
7 amounts are detailed as follows:

- 8 • Class Counsel Attorneys’ Fees Payment of not more than 35% of the Gross Settlement  
9 Amount; i.e., Three Hundred Eight Thousand Dollars and Zero Cents (\$310,998.80)  
10 and Class Counsel Litigation Costs of not more than Twenty Five Thousand Dollars  
11 and Zero Cents (\$25,000.00);
- 12 • Settlement Administration Costs Payment of not more than Eleven Thousand Eight  
13 Hundred Eighty Dollars and Zero Cents (\$11,880.00); (Exh. 1, §III(F));
- 14 • Class Representative Enhancement Payment of not more than Five Thousand Dollars  
15 and Zero Cents (\$5,000.00) to Plaintiff (Exh. 1, §III(D)); and
- 16 • PAGA Settlement Amount in the amount of Fifty Thousand Dollars and Zero Cents  
17 (\$50,000.00) for civil penalties under PAGA, with 75% (\$37,500.00) paid to the  
18 LWDA for the LWDA PAGA Payment and 25% (\$12,500.00) paid to PAGA Group  
19 Members for their Individual PAGA Group Payment. (Exh. 1, §III(C).)

20 23. The “Individual Settlement Payment” is each Class Member’s share of the Net  
21 Settlement Amount and will be calculated and apportioned from the Net Settlement Amount  
22 based on the number of workweeks a Class Member worked during the Class Period (“Individual  
23 Workweeks”). (Exh. 1, §VIII(D)). Further, to account for an overlapping prior class action  
24 settlement, any Class Members who participated in the prior class action settlement entitled  
25 *Mostajo v. Nationwide* (“Mostajo”) (United States District Court, Eastern District of California,  
26 Case No. 2:17-cv-00350-JAM-AC will have their workweeks that overlapped with the *Mostajo*  
27 release period valued at 50% of the value of their non-overlapping workweeks. (Exh. 1,  
28 § VIII(D)(1)). The “Individual PAGA Payment” is each PAGA Group Member’s individual share

1 of the PAGA Group Payment which will be calculated based on the number of pay periods each  
2 PAGA Group Member worked during the PAGA Period (“Individual PAGA Pay Periods”). (Exh.  
3 1, §VIII(E).) Specifically, “each PAGA Group Member, regardless of whether they timely  
4 submit a Request for Exclusion, shall receive a portion of the PAGA Settlement Amount  
5 proportionate to the number of pay periods with working hours that he or she worked during the  
6 PAGA Period, subject to Court approval.” (*Id.*) “All PAGA Group Members will receive at least  
7 a minimum Individual PAGA Payment equivalent to the figure paid to those PAGA Group  
8 Members who worked one pay period during the PAGA Period.” (*Id.*) PAGA Group Members  
9 will receive a separate check for their share of the PAGA Group Payment in addition to a check  
10 for their Individual Settlement Payment as a participating Class Member. (*See id.* at §§VIII(D)  
11 and (E).)

12 24. Defendant will pay its employer-side payroll tax obligations on the Wage Portion of  
13 the Individual Class Payments in addition to the Gross Settlement Amount. For tax purposes, the  
14 Individual Settlement Payments to Class Members shall be allocated as 25% wages and 75%  
15 interest and penalties. Defendant will separately pay its employer-side payroll tax obligations on  
16 the Wage Portion of the Individual Settlement Payments in addition to the Gross Settlement  
17 Amount. (Exh. 1, §III(B).)

18 25. 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 26. After soliciting and reviewing three bids from class action administrators, the parties  
23 selected Apex Class Action LLC (“Apex”) to handle the notice and administration of the  
24 Settlement based on the competitiveness of their bid, their competency in administering  
25 settlements, and their responsiveness to the parties’ counsel and settlement class members. Class  
26 Members will receive the Class Notice via first class mail (after the Settlement Administrator  
27 conducts a national change of address search). (Exh. 1, §V(C)). If the Class Notice is returned as  
28 non-deliverable on or before the Response Deadline and a new address is obtained by way of a

1 returned Class Notice, then the Settlement Administrator will promptly forward the original Class  
2 Notice to the updated address via first-class regular U.S. mail, indicating on the original packet  
3 the date of such re-mailing. (Exh. 1, §V(D)). Any mailing returned to the Settlement  
4 Administrator as undeliverable will be sent within three business days via First Class U.S. Mail to  
5 the forwarding address affixed thereto, if applicable. (Exh. 1, §V(D).) If no forwarding address is  
6 provided, the Settlement Administrator will attempt to determine the correct address again using a  
7 robust skip trace database to update and correct any known or identifiable address changes. (*Id.*)  
8 Following this procedure, the Settlement Administrator will perform a re-mailing via First Class  
9 U.S. Mail within three business days. (*Id.*) Class Members whose Class Notices are re-mailed to  
10 them will receive an additional 14 days to opt-out of the Class Action settlement. (Exh. 1,  
11 §VI(A).)

12 27. Class Members will have an opportunity to dispute the Workweeks and Pay Period  
13 information provided in their Class Notice and produce evidence to support their contentions.  
14 (Exh. 1, §VIII(F)). The Settlement Administrator shall decide the dispute and encourage the Class  
15 Member disputing their credited workweeks to produce supporting documentation in order to  
16 resolve the dispute. (*Id.*)

17 28. Class Members wishing to opt out from the Settlement Agreement are instructed to  
18 send a signed written request for exclusion to the Settlement Administrator within 60 days from  
19 the initial mailing of the Class Notice. (Exh. 1, §VI(A), (C)). Participating Class Members will  
20 also have the opportunity to object to the Settlement Agreement by serving a copy of the  
21 objection to the Settlement Administrator within 60 days after the mailing of the Class Notice  
22 (Exh. 1, §VII(A), (B)). Participating class members are not required to follow any particular  
23 procedure for their objections to be heard. The Settlement Agreement and Class Notice both state  
24 that a Class Member's right to opt out applies only to the class action portion of the Settlement  
25 and that no opt out right applies to the settlement of PAGA claims. (Exh. 1, §VI(B); §VIII(E).)  
26 ("There are no opt-out rights with respect to the PAGA portion of this Settlement"); Ex. 1, Ex. A  
27 (Notice of Class Action Settlement) ("You cannot opt-out of the PAGA portion of the proposed  
28 Settlement.").

**THE STRENGTH OF PLAINTIFFS' CASE**  
**IN LIGHT OF THE SETTLEMENT AMOUNT**

29. Because the class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

30. The strength of the plaintiff's case in light of the settlement amount is deemed by courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, made unlawful deductions from Class Members' pay, failed to timely pay all wages upon termination, failed to pay vacation wages, failed to reimburse necessary business expenses, and conducted illegal background checks. Based on these alleged violations, Plaintiff seeks recovery of unpaid wages, statutory penalties, and penalties pursuant to Labor Code § 2699 *et seq.* Plaintiff conducted informal discovery and investigated each of the claims they alleged. Specifically, Defendant produced documents and information relevant to the analysis of Plaintiff's claims, including: (a) all versions of Defendant's employee handbook in effect during the Class Period; (b) all versions of Defendant's relevant policies and procedures pertaining to the claims asserted in the lawsuit, including those pertaining to minimum wages, overtime, meal breaks, and rest breaks, and expense reimbursements, which were in effect during the Class Period; (c) Plaintiff's personnel files; (d) Plaintiff's timekeeping and payroll records; (e) a 98.6% sampling of the Class Members' timekeeping and payroll records; and (f) information on the class demographics including the total number of Class Members during the Class Period, total number of Class Members during the PAGA Period, total number of current employees, total number of former employees in the relevant time period, average hourly rate of pay, total number of workweeks worked during the Class Period, and the total number of paychecks issued

1 during the relevant time period. The merits of each of Plaintiff's claims will be addressed  
2 separately below.

3 31. Based on the data provided, Class Counsel estimated the following maximum  
4 exposures: unpaid wage claim at **\$397,463.20**, meal period claim at **\$474,169.73**, rest period  
5 claim at **\$392,458.27**, wage statement claim at **\$218,365.00**, waiting time penalties at  
6 **\$233,216.10**, reimbursement of business expenses claim at **\$20,950.00**, and on PAGA at  
7 **\$155,725.00**, and on FCRA at **\$83,800.00**, for a total maximum realistic exposure of  
8 **\$1,976,147.30**.

9 32. However, taking into account the difficulties of proof, the Defendant's defenses, and  
10 other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or  
11 other relief that the class could reasonably expect to be awarded at trial is significantly less than  
12 the maximum exposure estimated above.

### 13 **Minimum Wages and Overtime**

14 33. Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members at least  
15 minimum wages for all hours worked and proper overtime wages for hours worked in excess of  
16 eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 33.) Specifically, Plaintiff alleged that  
17 Class Members were required to perform pre-shift and post-shift off the clock work, including  
18 waiting for their computers to boot up and for Defendant's timekeeping program to open prior to  
19 clocking in and working both before and after their shifts to meet Defendant's job requirements  
20 and confer with managers as necessary. (*Id.*) Plaintiff also alleged that Defendant failed to  
21 incorporate additional non-discretionary and performance-based bonuses due to Class Members  
22 into the calculation of their regular rate of pay for overtime, meal and rest break premiums, and  
23 vacation and sick pay.

24 34. Defendant pointed to its written policies in effect during the Class Period which  
25 prohibit off-the-clock work and require nonexempt associates to accurately report all hours  
26 worked. Defendant, moreover, contended that they properly paid for all hours worked, including  
27 straight time and overtime hours, and that Class Members were trained to record all hours  
28 worked. Defendant also argued that it properly calculated Class Members' regular rates of pay

1 and that certain forms of compensation were properly excluded from the regular rate of pay  
2 calculation because they fell within a statutory exclusion or constituted discretionary  
3 compensation. Defendant argued that given their written policies and practices, any unrecorded  
4 hours were likely subject to individualized inquiry and unlikely to be certified. Given the  
5 difficulty in proving the merits and certifying this claim, Class Counsel had to apply a significant  
6 discount to damages based on this theory.

7 35. Based on the above detailed facts, Class Counsel estimated Defendant's exposure on  
8 unpaid wages claims to be approximately \$1,987,316.00 (based on 5 minutes of off the clock  
9 work per shift and assuming 40.5% of off the clock hours attributable to overtime). However,  
10 given Defendant's defenses and the potential hurdles facing certification of this claim, Class  
11 Counsel applied an 80% discount making for an adjusted exposure of **\$397,463.20**.

#### 12 **Meal Periods and Rest Breaks**

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

18 37. Plaintiff argued that Defendant had a common practice and policy of denying  
19 compliant meal periods. Specifically, Plaintiff alleged that Plaintiff and Class Members were  
20 regularly required to remain on duty or take shortened breaks so that they could perform work  
21 tasks and confer with managers as necessary. To avoid scrutiny from managers and the warnings  
22 in the timekeeping system, and due to chronic understaffing and exacting work and production  
23 expectations placed upon them by Defendants' management, Plaintiff alleged that Class  
24 Members would continue working at their work stations or otherwise on their phones during  
25 meals and after and before work shifts, never being provided the opportunity to take uninterrupted  
26 thirty (30) minute meal periods in accordance with California law. This practice of providing  
27 untimely, late and interrupted meal periods comports with Defendant's meal period policy which  
28 was uniformly applicable to all Class Members. For each meal period missed, of less than 30

1 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a  
2 complete and timely meal period, an employer must pay the employee an additional one hour of  
3 compensation. Labor Code § 226.7. This additional hour of compensation is referred to as  
4 “premium pay.” To comply with these laws, every employer must keep, for each employee,  
5 accurate time records showing when the employee begins and ends each work period and takes  
6 his or her meal periods. *See* Wage Order 1-2001(7)(A)(3).

7 38. Defendant disagreed with Class Counsel’s interpretation of the law and facts.  
8 Defendant maintained that its written meal policies are facially lawful, and that its policy and  
9 practice at all relevant times was to provide fully compliant and duty-free meal breaks to Class  
10 Members. Defendant contended that Plaintiff and Class Members had significant discretion to  
11 self-manage their breaks without impediments, were given a reasonable opportunity to take their  
12 meal periods, and in fact received their meal periods most of the time. Defendant argued they  
13 have a high meal period compliance rate.

14 39. Class Counsel estimated Defendant’s exposure on the meal break claim at  
15 approximately \$2,370,848.65 ((122,071 workweeks x 1 meal break violation per workweek x  
16 \$32.15 average hourly pay) less \$1,553,734.00 meal period premium payments). However, Class  
17 Counsel believes this estimate is high given Defendant’s defenses and potential hurdles facing  
18 certification of this claim and thus provided an 80% discount making Defendant’s adjusted  
19 realistic exposure **\$474,169.73**.

20 40. The same argument applied to rest breaks. Plaintiff contended that Defendant did not  
21 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction  
22 thereof, and alleged that Class Members consistently worked in excess of consecutive four-hour  
23 shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-  
24 hour shift which they were denied. Class Members were required to work through their rest  
25 breaks, and through their entire shifts.

26 41. Defendant maintained that Class Members were consistently authorized and permitted  
27 to take duty-free rest breaks in compliance with California law. Defendant also pointed out that,  
28 unlike meal periods, rest breaks need not be recorded, so any rest break violations would likely be

1 difficult to prove at trial. Defendant disputes all allegations that breaks were not received.  
2 Defendant also argued that Plaintiff would be unable to certify this claim because, among other  
3 reasons, Class Members had significant discretion with respect to how they chose to structure  
4 their workday and could choose the timing of their breaks; thus, individualized issues  
5 predominate across the putative class. As these considerations would likely depress the damages  
6 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the  
7 rest-break claim.

8 42. Class Counsel estimated Defendant's maximum total exposure on the rest break claim  
9 at approximately \$3,924,582.65 (122,071 workweeks x 1 meal break violation per workweek x  
10 \$32.15 average hourly pay). However, Class Counsel believes this estimate is high given the  
11 difficulty of proving rest break violations at trial and the potential hurdles facing certification of  
12 this claim difficult to achieve and thus applied a 90% discount making Defendant's exposure  
13 more likely to be **\$392,458.27**.

#### 14 **Paystub Violations**

15 43. Plaintiff also contended that Defendant failed to provide Class Members with accurate,  
16 itemized wage statements in writing as required by California Labor Code § 226(a) because the  
17 wage statements failed to accurately account for unpaid wages and overtime due to  
18 underreporting of hours and off the clock work. Moreover, Plaintiff contended the wage  
19 statements failed to accurately account for premium pay for deficiently provided meal and rest  
20 breaks which Defendant knew or reasonably should have known were owed to Plaintiff and Class  
21 Members. As a direct and proximate cause of Defendant's violation of Labor Code § 226(a), the  
22 Class Members suffered injuries, including among other things confusion over whether they  
23 received all wages owed them. Pursuant to Labor Code §§ 226(a) and 226(e), employees are  
24 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period  
25 in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay  
26 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also  
27 entitled to an award of costs and reasonable attorneys' fees.

28 44. Defendant contends that Plaintiff's claim for further Labor Code § 226(e) penalties

1 would depend in large part on their underlying meal period and wage claims, and thus be subject  
2 to the same defenses. Additionally, Defendant argues this claim has little or no value. *See*  
3 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements  
4 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later  
5 determined that employer did not properly pay all wages due). Defendant further contends that  
6 Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or  
7 she “suffered injury” from the employer’s failure to provide compliant wage statements, *see*  
8 *Elliot v. Spherion Pacific Work, LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law)  
9 (holding employee was not entitled to penalties because no injury was shown), and (2)  
10 Defendant’s noncompliance was “knowing and intentional.” Finally, because the damages for this  
11 cause of action are penalties, the statute of limitations only runs from one year prior to the filing  
12 of the original complaint. *See* Cal. Civ. Pro. § 340.

13 45. Class Counsel estimated Defendant’s maximum total exposure on the section 226 claim  
14 at approximately \$2,183,650.00 (\$50/\$100 x 31,145 pay periods (with 623 employees and a  
15 \$4,000 per employee maximum)). Class Counsel believes it may be difficult to prevail on this  
16 claim because Class Members would need to show that they suffered an injury and that  
17 Defendant’s noncompliance was knowing and intentional (on top of the challenges described  
18 above with the underlying wage and break claims) which are both subject to individualized issues  
19 making certification of this claim difficult to achieve. Thus, Class Counsel provided a 90%  
20 discount making Defendant’s adjusted exposure **\$218,365.00**.

#### 21 **Failure to Pay Final Wages**

22 46. In failing to pay the California Class Members their minimum wages, overtime wages,  
23 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,  
24 Plaintiff alleges that Defendant willfully failed to pay these the California Class Members all  
25 wages due and certain at the time of termination or within seventy-two (72) hours of resignation,  
26 as required under Labor Code § 203.

27 47. Labor Code § 203 provides that if an employer willfully fails to pay an employee all  
28 wages due at termination or within 72 hours of resignation, then that employee’s wages shall

1 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.  
2 Because Class Members stopped working for Defendant but again were not paid their full  
3 compensation for the reasons discussed above, Class Members did not receive all wages due upon  
4 termination of employment.

5 48. Defendant maintains that neither Plaintiff nor the Class Members are entitled to  
6 waiting time penalties. Defendant argued that, under Labor Code § 203, employers are only  
7 obligated to pay waiting-time penalties if they “willfully” fail to pay wages due and owing at the  
8 time of termination or resignation. Defendant also asserted an affirmative defense that waiting  
9 time penalties are precluded because a good faith dispute exists regarding whether any wages  
10 were due. As Title 8, California Code of Regulations, § 13520 states:

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

14 A “good faith dispute” that any wages are due occurs when an employer presents  
15 a defense, based in law or fact, which, if successful, would preclude any recovery  
16 on the part of the employee. The fact that a defense is ultimately unsuccessful will  
17 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.”

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

21 49. Class Counsel estimated Defendant’s maximum total exposure on the section 203 claim  
22 at approximately \$2,332,161.00 (assuming 310 terminated employees and 30 days per employee  
23 and 7.8 hours per day or 310 former employees X \$32.15/hr. avg. rate pay X 7.8 hours per day X  
24 30 days). Class Counsel estimates it would be difficult to recover waiting time penalties given  
25 that Plaintiff would need to show willfulness on top of proving the underlying wage and break  
26 claims which are also potentially subject to individualized issues making certification of this  
27 claim difficult to achieve. Thus, Class Counsel provided a 90% discount making Defendants’  
28 adjusted exposure **\$233,216.10**.

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

2            50.    Labor Code § 2802 provides that an employer must reimburse employees for all  
3 necessary expenditures incurred in the performance of their job duties. Plaintiff worked for  
4 Defendant and in the course of performing her job duties, incurred necessary business-related  
5 expenses, including, cellular telephone, computer, and internet expenses. Plaintiff, and upon  
6 information and belief the other Class members, were further required to incur other business and  
7 office type expenses to perform their daily job duties, again without reimbursement. For example,  
8 Plaintiff was required to purchase notepads, batteries, pens, paperclips, paper, a desk lamp, and a  
9 shredder. Defendant denied Plaintiff's allegations and maintains that it provided Plaintiff and all  
10 Class Members with all supplies and equipment necessary to do their job, and also pointed to  
11 written policies providing for reimbursement of business expenses, as well as evidence that Class  
12 Members could order office supplies and equipment through a Company-authorized vendor  
13 account as needed. Defendant also maintained that Plaintiff and Class members were not  
14 required to use their personal cell phones for work purposes or were otherwise not entitled to  
15 reimbursement for cell phone expenditures.

16            51.    Class Counsel estimated Defendant's maximum total exposure for failing to reimburse  
17 business expenses at approximately **\$20,950.00** (\$25 x 838 employees). Class Counsel believes it  
18 would be difficult to recover on this claim because Defendant maintains they did not require  
19 Class Members to use their personal cell phones, that they provided all equipment and tools  
20 necessary to do the job, and that Class Members were fully reimbursed for any business expenses  
21 incurred, and it would be difficult to certify in light of all the preceding arguments.

22                                    **Unfair Business Practices**

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

27                                    **PAGA Penalties**

28            53.    The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows

1 Plaintiff to obtain civil penalties on behalf of themselves and the PAGA Group for Defendant's  
2 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil  
3 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties  
4 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)  
5 for each aggrieved employee per pay period for the initial violation and two hundred dollars  
6 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to  
7 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to  
8 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)  
9 percent allocated to the affected employees. The limitations period as for all penalties is one year  
10 prior to the filing of the complaint.

11 54. The provisions of the Labor Code potentially triggering PAGA penalties in this case  
12 include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194,  
13 Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA liability would  
14 be huge because of the possibility of collecting multiple civil penalties for a single violation, and  
15 thus such penalties would almost always dwarf the damages available under the causes of action  
16 proper. However, maximum PAGA penalties are not mandatory, and courts have broad discretion  
17 to reduce PAGA penalty awards even where liability is established.. Labor Code § 2699(e)(2)  
18 states that "a court may award a lesser amount than the maximum civil penalty amount specified  
19 by this part if, based on the facts and circumstances of the particular case, to do otherwise would  
20 result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See, e.g., Lopez v.*  
21 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018), (recognizing  
22 court's ability to reduce PAGA penalties). Courts have held that situations similar to the current  
23 one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to  
24 reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th  
25 1112, 1134-1135 (2012) (holding that reduction was justified when employer "attempted to  
26 comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S.  
27 Dist. LEXIS 154590 at \*8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than  
28 80% – from \$2.8 million to \$500,000 – when "employees suffered no injury" employers were

1 “not aware” of the violation and “took prompt steps to correct all violations once notified”).  
2 Defendant here maintained that it had a strong argument that it would be unjust to award  
3 maximum PAGA penalties.

4 55. Furthermore, PAGA penalties are also derivative of each and every other claim, and  
5 Defendant therefore argued the PAGA claims would be subject to the same defenses to the  
6 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be  
7 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for  
8 initial violations under the applicable statutes, because Defendant have never been notified of the  
9 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to  
10 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.  
11 4th 1157, 1211-12. Therefore, if Labor Commissioner - on whose behalf Plaintiff is prosecuting  
12 this action for civil penalties - would not impose civil penalties in a case like this, the Court may  
13 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203  
14 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court’s reduction of PAGA civil  
15 penalties by 30 percent, finding that awarding the full penalties would have been “unjust” because  
16 “...a court may award a lesser amount than the maximum civil penalty amount specified by this  
17 part if, based on the facts and circumstances of the particular case, to do otherwise would result in  
18 an award that is unjust, arbitrary and oppressive, or confiscatory.”

19 56. Class Counsel estimated Defendant’s maximum total exposure on the PAGA claim at  
20 approximately \$3,114,500 (\$100 x 31,145 pay periods (no stacking)). However, Class Counsel  
21 notes that owing to the discretionary nature of PAGA penalties, Defendant’s defenses to the  
22 predicate claims, and the foregoing case law it is unlikely the Court would award the full penalty  
23 and that it would be substantially reduced to something more like **\$155,725.00** if awarded a  
24 violation rate of \$5 per pay period. Class Counsel applied discounts in light of the countervailing  
25 arguments with regard to the primary causes of action, and moreover the Court’s power to award  
26 “a lesser amount than the maximum civil liability.” The parties also considered that the purpose  
27 of PAGA is to “achieve maximum compliance with state labor laws,” *Iskanian v. CLS Transp.*  
28 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This PAGA penalties payment under the

1 Settlement remediates labor law violations that otherwise may have gone unremedied due to  
2 Defendant's substantial defenses to liability and the merits of the claims, and makes the  
3 Settlement's proposed PAGA payment of \$50,000.00 appropriate.

#### 4 **FCRA and ICRAA Penalties**

5 57. The FCRA's damages provision limits recovery when it is shown that a defendant's  
6 actions are willful to between \$100 and \$1,000 or actual damages, whichever is greater. With  
7 approximately 838 class members, the FCRA statutory damages, if liability were proven, ranges  
8 between \$83,800.00 to \$838,000.00. Given the nature of the claims at issue here, it is  
9 reasonable to assume that, if Plaintiff prevailed at trial, a jury in this case would enter an award  
10 at the lower end of the potential statutory damages range.

11 58. A jury verdict from the Northern District of California in an FCRA case illustrates the  
12 type of case where a jury would be more likely to award closer to the \$1,000 per violation  
13 penalty. *Ramirez v. Trans Union LLC* (N.D. Cal. 2017) 2017 WL 5153280 (Order denying  
14 Motion for New Trial). *Ramirez, supra*, at \*1, involved an award of over \$60 million in punitive  
15 and statutory damages in a case alleging violation of 15 U.S.C. § 1681e(b), which requires  
16 consumer reporting agencies to use "reasonable procedures to assure maximum possible  
17 accuracy" of the information they report. The defendant mistakenly identified the class members  
18 as being Specially Designated Nationals on the federal government's list of "terrorists, drug  
19 traffickers and others with whom Americans are prohibited from doing business." *Id.* In addition  
20 to punitive damages, the jury awarded statutory damages of \$984.22 per class member. *Id.* at \*5.

21 59. Here, Plaintiff alleges that Defendant violated Section 1681b(b)(2) of the FCRA by  
22 providing disclosure documents that allegedly contained extraneous information beyond the  
23 disclosure itself. Plaintiff does not contend that this alleged violation resulted in monetary  
24 damages, job loss, emotional distress, or reputational harm. Thus, while Plaintiff strongly believes  
25 that Defendant did not comply with the law, and that it was willful under *Syed v. M-I, LLC*, No.  
26 1:14-cv-00742 (E.D. Cal. Aug. 6, 2019), the alleged conduct at issue here is not comparable to  
27 the egregious conduct at issue in *Ramirez*.

28 60. In determining the amount of statutory damages to award under the FCRA, courts have

1 looked at “the importance, and hence the value of the rights and protections” involved in the case.  
2 *Ashby v. Farmers Ins. Co. of Or.* (D. Or. 2008) 592 F.Supp.2d 1307, 1308. For example, among  
3 the conduct prohibited by the FCRA is the inclusion of inaccurate information in consumer  
4 reports after the consumer has disputed the information. 15 U.S.C. § 1681i. It is reasonable to  
5 assume that a statutory damages award would be significantly higher where the underlying  
6 grievance was that inaccurate, seriously derogatory information is included in a consumer report,  
7 even though the consumer demonstrated that it was inaccurate. Another prohibited act is  
8 including arrest records that are more than seven years old in a consumer report. 15 U.S.C. §  
9 1681c(a)(2). It would be reasonable to assume that a violation of this section would result in a  
10 higher statutory damages award than the conduct at issue here.

11 61. An estimate of the likely award is admittedly somewhat speculative. However, district  
12 court decisions have indicated that the minimum of \$100 is the proper comparator in standalone  
13 disclosure cases. *See, e.g., Lagos v. Leland Stanford Junior University* (N.D. Cal. 2017) 2017 WL  
14 1113302 \*4. As a district court explained:

15 A review of Plaintiffs' claim indicates that, assuming success, the award at trial  
16 would be around \$100. While the inclusion of the waiver and disclaimer might  
17 have been inconsistent with the language of the stand-alone disclosure requirement,  
18 it was arguably consistent with the purpose of that provision. *See* Letter from  
19 Cynthia Lamb, Investigator, Div. of Credit Practices, Fed. Trade Comm'n, to  
20 Richard Steer, Jones Hirsch Connors & Bull, P.C. (Oct. 21, 1997), 1997 WL  
21 33791227 (F.T.C.), 1 (“The reason for specifying a stand-alone disclosure was so  
22 that consumers will not be distracted by additional information at the time the  
23 disclosure is given.”). As for the possibility that applicants did not understand the  
24 waiver (because it was included on the disclosure form), there is no indication that  
25 Kelly has ever attempted to enforce that waiver. As such, the violation of the  
26 FCRA asserted in this case is only technical in nature, and so the Court would  
27 expect class members to receive around \$100—or less—should they prevail at trial.  
28 *See Singleton v. Domino’s Pizza, LLC*, 976 F. Supp. 2d 665, 680 (D. Md. 2013)  
29 (“[T]his case involves allegations of technical FCRA violations, which creates the  
30 risk that even if a jury awarded the minimum requisite statutory damages, i.e., \$100  
31 to each of the individual class members, the court may find remitter/reduction  
32 appropriate.”). *Hillson v. Kelly Servs.*, 2017 WL 279814 (E.D. Mich. 2017)  
33 (approving settlement where statutory damages award ranged from \$14 to \$41 per  
34 class member).

35 In this case, Plaintiffs sought statutory damages under the FCRA, which provides  
36 for damages between \$100 and \$1,000 if the Plaintiffs can prove that violation of  
37 the statute was willful. 15 U.S.C. § 1681n(a)(1). To obtain statutory damages for an  
38 FCRA violation, plaintiffs must meet a very high standard of proof, and may even  
39 lose after a successful trial verdict. *See Smith v. LexisNexis Screening Solutions,*  
40 *Inc.*, 837 F.3d 604, 611 (6th Cir. 2016) (reversing jury verdict, finding that the  
41 consumer reporting agency’s conduct did not constitute a willful violation of the

1 FCRA); *Domonoske v. Bank of America, N.A.*, 790 F.Supp.2d 466, 476 W.D. Va.  
2 2011) (“given the difficulties of proving willfulness or even negligence with actual  
3 damages, there was a substantial risk of on payment [for FCRA violations]”). The  
4 FCRA does not provide specific guidance to courts as to the appropriate relief for a  
5 statutory violation. However, to recover actual damages Plaintiffs would need to  
6 prove that they suffered an actual injury; for example, that they lost job  
7 opportunities or their employment was terminated as a result of Aerotek’s actions.  
8 The settlement at issue provides for a common fund of \$15,000,000, and per class  
9 member payments of between \$13-\$80. (Doc. 33, p. 12). In the unopposed brief,  
10 Plaintiffs assert that given the breadth of violations, as well as the size of the Class,  
11 it is “unlikely that Plaintiffs would achieve an award of statutory damages which,  
12 on a per person basis, would substantially exceed \$100.” *Moore v. Aerotek, Inc.*  
13 (S.D. Ohio 2017) 2017 WL 2838148.

14 62. Multiple district courts have approved FCRA standalone disclosure settlements where  
15 the gross and net settlement amounts were comparable and even lower than here. *See, e.g., Rhom*  
16 *v. Thumbtack, nc.* (N.D. Cal. 2017) 2017 WL 4642409 (granting final approval in a case  
17 involving a claims-made, albeit non-reversionary, settlement where 66,676 class members shared  
18 in a \$225,000 settlement or a gross recovery of \$3.30 per class member); *Aceves v. Autozone Inc.*  
19 (C.D. Cal. Mar. 25, 2016) No. 5:14-cv-2032, ECF No. 41 (preliminary approval motion pending  
20 in settlement with gross recovery of \$20 per class member in the disclosure class); *In re Uber*  
21 *FCRA Litigation* (N.D. Cal. 2017) 2017 WL 2806698 (approved a settlement of \$7.5 million with  
22 1,025,954 class members, or \$7.31 per class member); *Landrum v. Acadian Ambulance Serv., Inc.*  
23 (S.D. Tex. Nov. 5, 2015) No. 14-cv-1467, ECF No. 37 (approving disclosure settlement of \$10  
24 per person); *Walker v. McClane/Midwest, Inc.*, No. 2:14-CV- 04315, ECF No. 26 (W.D. Mo. July  
25 20, 2015) (granting preliminary approval of settlement in which disclosure class members will  
26 recover \$24); *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 WL 3446596, at \*3 (E.D.  
27 Mich. Aug. 11, 2017) (noting that gross recovery in other FCRA 1681b(b)(2) cases average about  
28 \$30 per class member). *Grice v. Pepsi Bevs., Co.*, No. 17-cv-08853-JPO (S.D.N.Y. Jan. 28, 2019)  
(final approval of settlement providing for a gross recovery of \$51.54 per class member); *Perez v.*  
*Performance Food Grp., Inc.*, No. 2:17-cv-07128-MWF-JPR (C.D. Cal. June 7, 2019) (final  
approval of settlement that paid each class member \$47); *Syed v. M-1, LLC*, No. 1:14- cv-00742  
(E.D. Cal. Aug. 6, 2019) (final approval of class settlement that paid each class member \$46.84);  
*Ortiz v. Genco, Inc.*, No. 4:16-cv-04601-YGR (N.D. Cal. April 23, 2019) (final approval of class  
settlement where the FCRA portion paid each class member the net amount of \$39.70); *Dukes v.*

1 *Air Canada*, No. 8:18-cv-2176-T-17JSS (M.D. Fla. Jan. 30, 2020) (final approval of settlement  
2 that paid each class member \$41.61); *Felix v. WM. Bolthouse Farms, Inc.*, No. 1:19-cv-00312-  
3 AWI-HLT (E.D. Cal. May 4, 2020) (final approval of settlement that estimated that each class  
4 member would receive \$37.38 per consumer report that was obtained); *Harake v. Trace Staffing*  
5 *Solutions, LLC*, No. 8:19-cv-00243-CEH-CPT (M.D. Fla. August 10, 2020) (final approval of  
6 settlement providing a net amount of \$33 to each class member); *Rossini v. PNC Fin. Servs. Grp.,*  
7 *Inc.*, No. 18-cv-1370, 2020 U.S. Dist. LEXIS 113242 (W.D. Pa. June 26, 2020) (final approval of  
8 settlement that included a class of individuals that claimed a violation of § 1681b(b)(2) and that  
9 provided for a net payment of \$7.25 to each class member if all class members submitted claim  
10 forms, and \$72.49 assuming that around 10% of the class made claims). As noted above, if  
11 Plaintiff prevailed at trial, what a jury would award is speculative, particularly given that there is  
12 no history of jury verdicts in standalone disclosure cases to provide an empirical comparison.  
13 However, it would not be at all surprising if a jury decided to award closer to the \$100 minimum  
14 than the maximum. In summary, Plaintiff believes that using \$100 as the comparator is  
15 appropriate but, in any event, as shown above, this case is well within the range of FCRA  
16 standalone disclosure claims approved by courts.

17 63. With regards to damages for the ICRAA, the plain language of the ICRAA makes clear  
18 that statutory damages are not available in a class action. Cal. Civ. Code § 1786.50(a).

19 64. Finally, based on the text of the ICRAA statute, Defendant would assert that class  
20 members can elect to recover under the FCRA *or* ICRAA, but not under both. Cal. Civ. Code  
21 §1786.52(b). For all these reasons, courts have noted in the context of reviewing proposed class  
22 action settlements in similar cases that the potential recovery on state law background check  
23 claims is “quite limited” action cases. *See, e.g., In re Uber FCRA Litigation* (N.D. Cal. June 29,  
24 2017) 2017 WL 2806698, at \*5 (granting preliminary approval). It should be noted that Class  
25 Members who would prefer to seek individual statutory or actual damages on these claims rather  
26 than the payout in the class settlement have the opportunity to opt out of the Settlement.

### 27 Summary

28 65. The foregoing discussion has sought to explain how the settlement amount is adequate

1 in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of  
2 Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of  
3 those causes of action, and relating Defendant's legal and factual arguments that worked to  
4 derogate from the strength of Plaintiff's case.

5 66. Class Counsel had to apply appropriate discounts in light of the facts and law as  
6 discussed above. In addition, meal period liability exposure is limited by the fact that not all Class  
7 Members worked on the same schedule and under the same supervisors, making the certification  
8 of all Class Members across all locations less than a certainty. Thus, this settlement, like most  
9 others, was the product of compromise. Because of these and other risks, a recovery of Eight  
10 Hundred Eighty-Eight Thousand Five Hundred Sixty-Eight Dollars and Zero Cents (\$888,568.00)  
11 under the Settlement Agreement is an excellent result. Under the Settlement, each of the  
12 approximately 838 Class Members will receive, using a straight average and assuming they  
13 worked throughout the Class Period, \$579.58 for their Individual Class Payment. The estimated  
14 average amount each Class Member will receive per workweek based on the Net Settlement  
15 Amount and 122,071 workweeks is \$3.98. The Gross Settlement Amount of \$888,568.00  
16 represents a recovery of 44.96% of the estimated maximum realistic exposure in this case, which  
17 Class Counsel submits is an excellent result and easily meets or exceeds percentages routinely  
18 approved by courts.

19 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**  
20 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**  
21 **STATUS THROUGH TRIAL**

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

26 68. Further litigation of this case posed real risks for a number of reasons. First, there were  
27 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in  
28 the previous section. In that section, it was observed that almost every cause of action was subject

1 to some unique indeterminacy of its own, and that the derivative causes of action were thus  
2 subject to a double indeterminacy, both their own and those of the causes of action on which they  
3 were based.

4 69. The parties disputed the effect of these and other issues on class certification and  
5 decertification. Class Counsel maintained that there were several legal and factual questions at  
6 issue in the case that could best be decided on a class wide basis. Class Counsel contended that  
7 the same policies and practices applied to all Class Members and therefore common questions  
8 obtained and were likely to predominate over individual inquiries. Defendant disputed these  
9 contentions and insisted that the *Brinker* decision called into question the certifiability of cases  
10 such as this one. Defendant also argued that its policies were compliant with the law, while  
11 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would  
12 give rise to common questions amenable to certification. Thus, the parties had set positions on the  
13 propriety of certifiability and liability that did not admit of an easy resolution.

14 70. Finally, it is always preferable to reach a relatively early resolution of a dispute  
15 because, in addition to what has already been said, such resolutions save time and money that  
16 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial  
17 there was a need to resolve this matter soon than later. If this case settled after further litigation,  
18 the settlement amount would have taken into account the additional costs incurred, and there  
19 might have been less available for Class Members after all was said and done. This is not just an  
20 abstract contention. The parties were moving into the phase of this litigation where they would  
21 have had to depose a number of people such as managers, supervisors, and employees in order to  
22 establish liability for trial. Discovery disputes would have been in the offing. The parties were  
23 also aware that a class action trial would be a complicated and expensive proceeding, and then  
24 there was the likelihood of a long, drawn-out appeals process. In contrast, the settlement provides  
25 real benefits for Class Members in the immediate future. The benefits are not insignificant for  
26 anyone, especially given the current economic climate. Consequently, the risk and expense of  
27 further litigation outweighed any benefit that might have been gained otherwise.

28 **NOTICE TO CLASS MEMBERS**

**OF THE PROPOSED SETTLEMENT**

71. The notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Notice of Settlement (“Class Notice”), attached to the Settlement Agreement as **Exhibit A**. Defendant will provide the Settlement Administrator with the following information for each Class Member and/or PAGA Group Member within 30 days after entry of the Court’s preliminary approval order, in a password protected Microsoft Excel format: name, last known address, Social Security number, and the number of Individual Workweeks and/or Individual PAGA Pay Periods attributable to each Class Member/PAGA Group Member (the “Class Data”). (Exh. 1, § V(A).) To protect Class Member’s privacy rights, the Settlement Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, restrict access to the Class Data to Settlement Administrator employees who need access to the Class Data to effect and perform under the Settlement Agreement. (*Id.*). Under the Settlement Agreement, within 14 days of receiving the Class Data from Defendant, the Settlement Administrator will mail the Class Notice to each Class Member via First Class U.S. mail. (Exh. 1, §V(C)). Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Exh. 1, §V(C)) If the Class Notice is returned as non-deliverable on or before the Response Deadline and a new address is obtained by way of a returned Class Notice, then the Settlement Administrator will forward the original Class Notice to the updated address via first-class regular U.S. mail, no later than three (3) business days after the Administrator’s receipt of any Class Notice returned as undelivered. (Exh. 1, §5(D)) Thus, most, if not all, Class Members will likely receive the Class Notice.

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

1 Administrator will have a website for Class Members to review and reference for details  
2 regarding the Final Approval Hearing and any Final Approval Order and Judgement. If the Court  
3 grants final approval of the Settlement, a copy of the Final Approval Order and Judgment will be  
4 posted on this website for Class Members to review. The website will be provided to Class  
5 Members in the Class Notice that is mailed to them. Further, the settlement agreement does not  
6 impose any affirmative duties on Participating Class Members. No claim form is required to  
7 participate in the Settlement. Individuals who wish to opt out or object may do so. Moreover, the  
8 Class Notice will specifically direct any Class Members who have questions or concerns to  
9 contact the Settlement Administrator or Class Counsel. Counsel for both parties have agreed to  
10 the language in the Class Notice, which is attached as Exhibit A to the Settlement Agreement.  
11 There is no need to provide the Class Notice in a language other than English because neither  
12 Plaintiff nor Defendant have reason to believe that Class Members are not proficient in English.

13 73. If a Class Member disputes the number of workweeks stated for that Class Member in  
14 the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter  
15 by submitting in writing the workweeks that the Class Member claims to have actually worked  
16 for Defendant during the Class Period. (Exh. 1, §VIII(F)). After consultation with Class Counsel  
17 and Defendant's Counsel, the Class Action Administrator will make a determination of the Class  
18 Member's total workweeks during the applicable period. (*Id.*)

#### 19 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

20 74. The foregoing discussion establishes the fairness of the class-action settlement in the  
21 instant case. It has done this by analyzing the settlement in light of the appellate decisions in  
22 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and  
23 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour  
24 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.  
25 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal  
26 uncertainty, particularly with regard to Plaintiff's claim for failure to provide proper meal and rest  
27 periods. From Class Counsel's substantial experience with wage-and-hour class action lawsuits  
28 Class Counsel believes that this case could not have settled on better terms under the

1 circumstances. Request therefore is made that the settlement be granted preliminary approval so  
2 that those persons whom it was intended to benefit shall be afforded the opportunity to determine  
3 its adequacy.

#### 4 **REQUEST FOR ATTORNEYS' FEES AND COSTS**

5 75. Under the Settlement, Class Counsel also requests, without opposition from Defendant,  
6 an award of Attorneys' Fees and Costs consisting of not more than 35% of the Gross Settlement  
7 Amount; i.e., (\$310,998.80), in Attorneys' Fees and (2) not to exceed Twenty-Five Thousand  
8 Dollars and Zero Cents (\$25,000.00) for reimbursement of actual reasonable litigation costs.  
9 (Exh. 1, §III(E); *See also* a current log of Plaintiff's costs to date and estimated future costs  
10 attached hereto as **Exhibit 4**). This request is fair, reasonable, and adequate to compensate Class  
11 Counsel for the substantial work they have put into this case and, moreover, the risk they assumed  
12 by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel  
13 for all uncompensated work that they have already done and for all the work they will continue to  
14 do in carrying out and overseeing the notification to Class Members, communicating with Class  
15 Members regarding their claims, and assisting in the administration of the settlement if it is  
16 preliminarily approved. Defendant will not oppose Class Counsel's above fees and cost request.

17 76. D.Law, Inc. took this case on a contingent-fee basis against a business represented by a  
18 reputable defense firm. When we take contingent cases, we must pay careful attention to the  
19 economics involved or one bad case can destroy years of work. Accordingly, when we take  
20 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal  
21 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the  
22 number of hours in a day is limited. Because of this, when we take on one particular matter, we  
23 are unable to take on other matters. When Class Counsel became involved in this case, we  
24 realized the time commitment that it would entail, and we were forced to turn down matters that  
25 we otherwise should have been able to handle. In sum, this case claimed a significant portion of  
26 Class Counsel's time and attention throughout its pendency.

27 77. The requested fee is reasonable for the services provided to Class Members and for the  
28 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*

1 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would  
2 still be justified. Here, the lodestar may exceed the requested fees. Class Counsel will more fully  
3 brief the Court on its lodestar in the motion for final approval.

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

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

11 79. The courage it took to stand up to Defendant by filing and litigating this action in this  
12 way should not be underestimated. By suing Defendant, Plaintiff increased the risk of retaliation  
13 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable  
14 resources, and Plaintiff justifiably fears the fact that she served as class representative in a wage  
15 and hour class action will not be lost on a prospective employer who may choose between an  
16 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is  
17 particularly real in the information age, where employers can, more easily than ever, perform  
18 background checks of prospective employees, sometimes with the stroke of a key. It is common  
19 for employers to screen employee candidates to determine whether they have ever filed suit, and  
20 employee candidates who might be branded "litigious" are likely to be screened out of the  
21 process. In fact, an entire industry has developed for providing employers with background  
22 information on employee candidates.

23 80. But Plaintiff did not allow her fear of the potential repercussions of being a class  
24 representative deter them from acting for the benefit of Class Members. To the contrary, Plaintiff  
25 has been intimately involved in this case since its inception. They have devoted a substantial  
26 amount of time to helping Class Counsel effectively develop and prosecute this action at every  
27 stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with  
28 Class Counsel on numerous occasions to discuss every aspect of her case. Plaintiff provided Class

1 Counsel with information about Defendant and about the industry generally, reviewed documents,  
2 identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length,  
3 participated in the mediation process, monitored the progress of the litigation with Class Counsel,  
4 and reviewed and signed the Settlement Agreement.

5 81. Plaintiff has spent a significant amount of time with Class Counsel detailing her  
6 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this  
7 action. She has diligently, adequately, and fairly represented Class Members. The payment to  
8 Plaintiff is intended to recognize her time and effort on behalf of the Class. The amount requested  
9 is fair and appropriate based on her contribution and involvement. For example, Plaintiff  
10 instigated the lawsuit by bringing these violations to the attention of Class Counsel. She spent  
11 several hours answering questions and providing information to Class Counsel throughout the  
12 pendency of this action. She identified witnesses, explained to Class Counsel day to day business  
13 practices of Defendant with regard to work schedules and meal breaks, etc. This sort of payment  
14 to a class representative has been a common feature of settlements negotiated by Class Counsel  
15 and has been routinely approved by trial courts.

16 82. In light of the foregoing, Class Counsel believes that the Class Representative  
17 Enhancement Payment in the amount of Five Thousand Five Hundred Dollars and Zero Cents  
18 (\$5,000.00) to the Class Representative is fair and reasonable.

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

20 83. The proposed Classes satisfy the criteria for certification of a settlement class under  
21 California law, as embodied in California Code of Civil Procedure § 382. In general, courts may  
22 take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk*  
23 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a "lesser standard" of  
24 scrutiny applies in certifying classes for settlement purposes only. *Ibid.* Therefore the Court  
25 should take into consideration the fact that the parties have settled their claims and stipulated to  
26 certification for settlement purposes when assessing typicality and adequacy.

27 a. Numerosity. The putative classes are so numerous that joinder of all members is  
28 impractical. Class Members are "all non-exempt employees based in California and employed by

1 Nationwide at any time from July 17, 2019, through [...] April 14, 2025.” There are  
2 approximately 838 persons answering to this definition. Thus, there are a sufficient number of  
3 Class Members to warrant certifying this as a class action for settlement purposes.

4 b. Ascertainability. The putative classes are defined in a manner that is precise,  
5 objective, and ascertainable. The Class Members have already been identified by reference to  
6 Defendant’s payroll and personnel records.

7 c. Typicality. A class representative’s claims are typical when they arise from the  
8 same event, practice, or course of conduct that gives rise to the claims of other putative class  
9 members, and if their claims rest on the same legal theories. The class representative’s claims  
10 must be “typical” but not necessarily identical to the claims of other class members. It is  
11 sufficient that the representative is similarly situated so that he or she will have the motive to  
12 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*  
13 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been  
14 the law in California that the class representative must have identical interests with the class  
15 members.”). Thus, it is not necessary that the class representative should have personally incurred  
16 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*  
17 (2001) 91 Cal.App.4th 224, 228.

18 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same  
19 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant  
20 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay  
21 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central  
22 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to  
23 provide meal and rest periods etc.), which would arise if this were an individual action brought by  
24 Plaintiff, apply to the other Class Members as well, and the answer to these questions would  
25 determine Defendant’s liability to the entire putative class. Thus, Plaintiff’s claims are typical of  
26 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

27 d. Adequacy. A class representative must possess the same interest and suffer the  
28 same injury as the class members. “To assure ‘adequate’ representation, the class representative’s

1 personal claim must not be inconsistent with the claims of other members of the class.” *J.P.*  
2 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,  
3 the adequacy requirement is satisfied when the class representative’s interests are not antagonistic  
4 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

5 Plaintiff does not have any conflicts with the class and in fact her interests are aligned  
6 with those of the class. Because Plaintiff’s claims are identical to those that would be asserted by  
7 the unnamed Class Members were they before the Court, Plaintiff has every interest in zealously  
8 representing the unnamed class members. Plaintiff has not shrunk from this responsibility.  
9 Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and  
10 effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-  
11 and-hour litigation, especially class actions, and have zealously represented the interests of the  
12 class in litigating this case. *See infra* ¶¶8-9. Accordingly, the adequacy requirement is satisfied.

13 e. Commonality. Common questions of law or fact in this case predominate over  
14 individual questions. This action involves, *inter alia*, a determination about Defendant’s alleged  
15 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages  
16 due to allegedly common and unlawful policies, failure to pay final wages when required, failure  
17 to provide accurate wage statements, failure to pay employees on a timely basis, failure to  
18 reimburse for business expenses, and largely derivative claims under the Business & Professions  
19 Code and PAGA, and violation of the FCRA. Plaintiff contends these practices, including an  
20 alleged practice of failing to provide complete meal periods, related meal period policies  
21 applicable to the class, and the alleged failure to provide corresponding premium payments, that  
22 affected class members in the same way. All class members were employed during the Class  
23 Period. Therefore, the operative complaint delineates a common course of conduct applicable to  
24 all Class Members. Therefore, based on Class Counsel’s investigation, the review of the  
25 discovery produced by Defendant, and their discussions with Plaintiffs, Plaintiffs contend the  
26 evidence supports their position that the employment practices and policies of Defendant’s  
27 business were consistent and uniform.

28 f. Predominance. Individualized issues do not predominate over the issues of law and

1 fact that are common to the class as a whole. The principal issues of controversy are whether  
2 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,  
3 *supra*, there are common issues of law and fact given that Plaintiffs and all Class Members were  
4 subjected to the same policies and pay practices during the relevant time period. Plaintiff and  
5 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for  
6 work performed as non-exempt employees for Defendant. These issues are suitable for common  
7 adjudication because all Class Members were subject to the same employment policies and  
8 Plaintiff contends the practices applied uniformly to all Class Members.

9 g. Superiority. Class resolution is superior to other available methods for the fair and  
10 efficient adjudication of the controversy. There is little interest or incentive for Class Members to  
11 individually control the prosecution of separate actions. Although the injury resulting from  
12 Defendant's policies and practices are real and significant, the cost of individually litigating each  
13 such case against Defendant would easily exceed the value of any relief that could be obtained by  
14 any one Class Member individually. If Class Members are forced to litigate their claims  
15 individually this would result in about 838 individual actions against Defendant. Here, the  
16 alternative methods of resolution are individual suits for relatively small amounts. Hence, an  
17 individual suit would prove uneconomical for a potential plaintiff because litigation costs would  
18 dwarf a potential recovery.

19 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other  
20 actions by Class Members against Defendant asserting similar claims as here. Furthermore, Los  
21 Angeles County is a compelling forum for this action given that Defendant's location is in Los  
22 Angeles County and numerous Class Members work in this County.

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

26 84. A true and correct copy of Plaintiff's PAGA Letter to the LWDA is attached hereto as  
27 **Exhibit 2.**

85. On May 1, 2025, Plaintiff submitted the Class Action and PAGA Settlement Agreement and Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as **Exhibit 3.**

86. A true and correct copy of Class Counsel's costs to date and estimated future costs is attached hereto as **Exhibit 4**.

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

Executed this 1st day of May, at Glendale, California.

/s/ Enoch J. Kim  
Enoch J. Kim

# EXHIBIT 1

## CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE AGREEMENT

This Class Action and Private Attorneys General Act Settlement and Release Agreement (“**Agreement**,” “**Settlement Agreement**” or “**Settlement**”) is entered into by Plaintiff Ana Lemus (“**Lemus**” or “**Plaintiff**”), on behalf of herself, the State of California Labor and Workforce Development Agency (“**LWDA**”), and those Plaintiff seeks to represent, on the one hand, and, on the other hand, Nationwide Mutual Insurance Company (“**Nationwide**” or “**Defendant**”). For purposes of this Agreement, Plaintiff and Nationwide are collectively referred to as the “**Parties**.”

By way of this Agreement, the Parties seek to settle all claims that were or could have been raised in the actions entitled *Ana L. Lemus v. Nationwide Mutual Insurance Company*, U.S.D.C. N.D. Cal. Case No. 2:23-cv-01871-DAD-SCR and *Ana L. Lemus v. Nationwide Mutual Insurance Company*, Sacramento Sup. Ct. Case No. 23CV012222. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising disputed legal and factual issues and that nothing in this Settlement Agreement is an admission of liability or wrongdoing by Defendant.

### RECITALS

1. **The Actions.** On July 17, 2023, Plaintiff filed a putative class action lawsuit entitled *Ana L. Lemus v. Nationwide Mutual Insurance Company* in Sacramento County Superior Court, Case No. 23CV004939, which Nationwide subsequently removed to the United States District Court for the Eastern District of California, where it remains pending at Case No. 2:23-cv-01871-DAD-SCR (the “**Federal Action**”). Plaintiff also later filed a PAGA-only lawsuit entitled *Ana L. Lemus v. Nationwide Mutual Insurance Company* in Sacramento County Superior Court, Case No. 23CV012222, which was based on the allegations set forth in the letter sent on her behalf to the California Labor and Workforce Development Agency dated July 17, 2023 (the “**PAGA Action**”). Together, the Federal Action and the PAGA Action are referred to collectively as the “**Actions**.”
2. **The Parties’ Successful Mediation Efforts.** On January 15, 2025, the Parties to the Actions attended a private mediation with Tripper Ortman, a well-respected and highly sought-after mediator with extensive experience in wage and hour, class and representative action litigation. The Parties reached a settlement of the Actions at the full-day mediation and subsequently executed a detailed Memorandum of Understanding on February 21, 2025.
3. **Class Counsel’s Investigation.** D.Law Inc., counsel for Plaintiff, the Class Members, and the PAGA Group Members, conducted a formal and informal investigation into the facts and allegations of the Actions, including an extensive review of produced documents and data. In particular, Class Counsel made informal discovery requests in advance of mediation, and reviewed and analyzed documents produced in response to such requests, including Plaintiff’s personnel information, Defendant’s written policies relating to the claims asserted in the Actions, all reasonably accessible time records and payroll data for the Class, and other data reflecting the pay periods and workweeks worked by Class Members during the relevant time period. Class Counsel also investigated the claims against Defendant in the Actions and analyzed all applicable defenses raised by Defendant.

4. **Class Counsel's Evaluation.** Class Counsel believes that the Settlement documented by this Agreement is fair, reasonable, and adequate, and in the best interest of the Class Members and PAGA Group based on all known facts and circumstances, including the risk of significant delay, defenses asserted to the merits of the Actions, defenses asserted to class certification and the PAGA representative action, as well as defenses to the overall issue of liability and damages, and potential appellate issues.

5. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind that were or could be asserted in the Actions based upon the operative facts alleged or theories asserted in any of Plaintiff's complaints, amended complaints in the Actions or in the letter to the Labor and Workforce Development Agency ("LWDA").

6. By way of this Agreement, the Parties anticipate that a first amended complaint will be filed in the PAGA Action for the purpose of adding the claims that have been asserted in the Federal Action; that the Federal Action will be stayed pending preliminary and final settlement approval in the PAGA Action; that approval of this settlement will be filed in the PAGA Action; and that if the Settlement is approved, the Parties will stipulate to an entry of judgment and dismissal in the Federal Action based on the judgment entered in the PAGA Action. Additionally, the Parties intend the Settlement of the Actions as described in this Agreement to be contingent upon: (1) the Court's preliminary and final approval of the terms of this Agreement, including entry of a final approval order and the judgment described in Section X(A)(3); (2) the Court granting the Parties' stipulation permitting the filing of a first amended complaint in the PAGA Action which will include the factual allegations and claims asserted in the Federal Action and add all claims from the original complaint and any letters Plaintiff sent to the LWDA; and (3) dismissal of the Federal Action with prejudice consistent with Section X(A)(4).

7. **The Parties stipulate to the certification of this Settlement Class solely for purposes of this Agreement.** The Parties stipulate to certify the Class described herein for settlement purposes only. The Parties' stipulation to class certification is contingent upon the preliminary and final approval and certification of the Settlement Class only for purposes of this Agreement. Should this Agreement not become final or not be approved by the Court, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as part of the Agreement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in the Actions. Defendant does not waive, and instead expressly reserves, its right to challenge the propriety of class certification or representative treatment for any purpose should the Court not approve this Agreement.

8. **The Parties' Agreement to Cooperate and Execute Necessary Documents.** The Parties agree to cooperate and to take all steps reasonably necessary and appropriate to effectuate the terms of this Agreement including to obtain a preliminary approval order and Final Approval Order of this Settlement, to obtain entry of judgment and/or dispose of the Actions and claims of Class Members and aggrieved employees with prejudice, and to have Defendant timely provide the Class Data (defined below) and fund the Gross Settlement Amount.

NOW THEREFORE, in consideration of the recitals listed above and the promises, releases, and warranties set forth below, and with the Parties' intent to be legally bound and to acknowledge

the sufficiency of the consideration and undertakings set forth herein, Plaintiff, individually and on behalf of the Class Members, the PAGA Group, and the State of California LWDA, on the one hand, and Defendant, on the other hand, agree that the Actions shall be and are finally and fully compromised and settled as to the Released Parties, on the terms and conditions set forth herein, subject to Court approval:

## **AGREEMENT**

### **I. DEFINITIONS**

- A. Class Definition and Class Period: “**Class**,” “**Settlement Class**,” or “**Class Members**” means: all non-exempt employees based in California and employed by Nationwide at any time from July 17, 2019 through the date the Court grants preliminary approval of the settlement or April 14, 2025, whichever date comes first (“**Class Period**”). The Settlement Class consists of Individuals who meet the foregoing criteria during the Class Period are referred to herein individually as “Class Member” or collectively as “Class Members.”
- B. “**Class Counsel**” means: Emil Davtyan, David Yeremian, Alvin Lindsay, Enoch J. Kim, Antonia McKee, and the attorneys of D.Law, Inc.
- C. The “**Court**” shall mean, for purposes of this Agreement, the court in which Plaintiff files her motions for preliminary and final approval of the Settlement, as contemplated herein.
- D. “**Effective Date**”. The “**Effective Date**” of the settlement shall be the date on which all of the following events described in this paragraph have occurred: (a) the Court has conducted the Final Settlement Approval Hearing and fully and finally approved all material terms of this Settlement Agreement; (b) the Court enters a Final Approval Order granting final approval of the Settlement Agreement; (c) a Judgment has been entered in each of the Actions, and the time period to appeal each of the Judgments has been exhausted without any appeals having been filed; and (d) to the extent any timely appeal was filed, all such appeals have been voluntarily or involuntarily dismissed, or the appropriate appellate court or the appellate courts have entered a final judgment affirming the Final Approval Order as well as the judgment or dismissal order in the Federal Action without material modification and the final judgment(s) of such appellate court or courts are no longer subject to any further appellate challenge or procedure.
- E. “**Final Approval Order**” refers to the order by the Court finally approving the Settlement following the Final Settlement Approval Hearing.
- F. PAGA Group and PAGA Period: “**PAGA Group**” or “**PAGA Group Members**” means all persons who were classified as nonexempt and employed in California at any time between September 23, 2022 and the date of preliminary approval or April 14, 2025, whichever date comes first (“**PAGA Period**”). Individuals who meet the foregoing criteria during the PAGA Period are referred to herein individually as “PAGA Group Member” or collectively as “PAGA Group Members.”

- G. **“Settlement Administrator”** refers to Apex Class Action Administration, the third-party administrator, who has been mutually selected by the Parties, subject to Court approval, to perform the notice, settlement administration, and distribution of payment functions further described in this Agreement. The Settlement Administrator shall establish a Qualified Settlement Fund (QSF) pursuant to U.S. Treasury Regulation Section 468B-1 for purposes of administering the Settlement.

## II. PROVISIONAL APPROVAL OF THIS AGREEMENT

- A. Upon execution of this Agreement, the Parties shall take the following actions:

1. The Parties will work together to bring all of the claims being resolved by the Parties’ Agreement before one court to consider, and then preliminarily and finally approve of the Parties’ settlement agreement. In the interest of efficiency, the Parties intend and agree to seek court approval of the Settlement of the Actions in the court in which the PAGA Action is pending and agree to take all necessary steps to add all claims asserted in the Federal Action to the PAGA Action. To that end, the Parties will do all of the following: (1) file a joint stipulation in the Federal Action requesting that the court enter a stay of all proceedings pending settlement approval and set a status conference for 180 days from the date of execution of this Agreement; (2) file a joint stipulation requesting that the court lift the stay of the PAGA Action for purposes of allowing the parties to seek settlement approval and related proceedings, and grant leave to file an agreed-upon First Amended Complaint in the PAGA Action which will include the factual allegations and claims asserted in the Federal Action and add all claims from the original complaint. The stipulations filed in both actions will also provide that, in the event the Court does not grant final approval of the class/PAGA action settlement, the Parties return to status quo as existed prior to the date the Parties signed this Agreement and the operative complaint in each lawsuit shall be the initial complaint filed in the PAGA Action and the First Amended Complaint filed in the Federal Action. In the event the Court does not approve of the Parties’ procedural stipulation(s) as described in this Paragraph, the Parties agree to meet and confer in good faith and take all necessary steps to accomplish the intent of this Paragraph.
2. Class Counsel will prepare a motion requesting that the Court enter a preliminary approval order preliminarily approving the proposed settlement, certifying the Class for settlement purposes only, approving the form of notice and authorizing the mailing of notice to class members, designating Class Counsel (as defined above) as Class Counsel for purposes of settlement approval and Plaintiff as the Class Representative, appointing a settlement administrator, and setting a date for the final approval hearing. Class Counsel’s motion shall include the attestation required under Sacramento Sup. Ct. Local Rule 2.99.05. Class Counsel shall provide counsel for Defendant with a draft of the preliminary approval motion and supporting papers for review and opportunity to provide comments within

thirty (30) days after the Settlement Agreement is executed and at least fifteen (15) business days prior to the filing of the motion for preliminary approval. Class Counsel shall not file a motion for preliminary settlement approval without first confirming with counsel for Defendant that Defendant has no objection to any matters stated within the other preliminary approval papers. The Parties shall jointly prepare the proposed Preliminary Approval Order, and Class Counsel shall submit it in the form and content mutually agreed to by the Parties. The proposed preliminary approval order shall include all of the following:

- a) Preliminarily certifying, for settlement purposes only, a Class comprising the Class Members;
- b) Preliminarily appointing, for settlement purposes only, Class Counsel;
- c) Preliminarily appointing, for settlement purposes only, Plaintiff, as the class representative;
- d) Appointing and approving Apex Class Action Administration as the Settlement Administrator;
- e) Provisionally approving all terms of this Agreement and finding that such terms are sufficient to warrant sending notice of settlement to Class Members;
- f) Approving the form and content of the Notice of Proposed Settlement and Final Settlement Approval Hearing (the “**Class Notice**”) which is attached to this Agreement as **Exhibit A**;
- g) Authorizing the mailing of the Class Notice to the Class Members; and
- h) Scheduling a hearing, to occur on a Friday at 9:00 a.m. within a reasonable period after the Response Deadline (defined below) has expired, in which the Court will hear Plaintiff’s motion requesting the Court to fully and finally approve this Agreement and the settlement herein, and enter judgment (the “**Final Settlement Approval Hearing**”).

Defendant does not intend to oppose Plaintiff’s Motion for Preliminary Approval provided such motion and supporting papers are consistent with the terms of this Agreement.

- B. **Notice of Settlement to Appropriate Government Officials.** Pursuant to California Labor Code section 2699(l)(2), Class Counsel will provide to the LWDA all required notices and documents to facilitate approval of the settlement in accordance with PAGA, including submitting to the LWDA a copy of the proposed settlement at the same time that it is submitted to the Court, a copy of the Court’s

judgment, copies of any other orders that award or deny penalties, and a copy of the operative Complaint.

This Agreement is contingent upon entry of the Final Approval Order by the Court that is consistent with the terms and conditions specified in this Agreement. However, the Parties agree and acknowledge that the Court may condition the Final Approval Order on modification of this Agreement, which shall not be the basis for nullifying and voiding the Settlement unless the required modification is material (including but not limited to modifications to the Gross Settlement Amount or release provisions of this Agreement) and the Parties have exhausted all efforts to address the Court's concerns as necessary to obtain final approval. The Court's decision to award less than the amounts requested for the Enhancement Payment, Class Counsel Attorneys' Fees, Class Counsel Litigation Costs and/or Settlement Administration Costs shall not constitute a material modification to the Agreement within the meaning of this paragraph. This Agreement shall become null and void in the event the Court for any reason refuses to enter the orders specified in Section II(A)(2) after all opportunities granted by the Court to the Parties for amendment have been exhausted. In the event the Court for any reason refuses to enter such orders, the Parties agree to cooperate in good faith to resolve any issues addressed by the Court, and exhaust all possible solutions to obtain the Court's approval. If the Parties cannot agree on how to address issues raised by the Court to obtain approval of this Agreement or the relief specified in this Section II, then they will seek the assistance of the mediator for resolution.

### III. ALLOCATION OF GROSS SETTLEMENT AMOUNT

- A. The following are material conditions to be satisfied before and as a condition to payment of the Gross Settlement Amount (defined below):
  1. Execution of this Agreement by all signatories.
  2. The Court has conducted a Final Settlement Approval Hearing and fully and finally approves all material terms of this Agreement.
  3. A Final Approval Order and judgment including all of the provisions identified in Section X(B)(3) is entered by the Court and the Effective Date has passed.
  4. The Federal Action is dismissed with prejudice as described in Section X.
- B. **Gross Settlement Amount.** "Gross Settlement Amount" means the maximum settlement amount of Eight Hundred and Eighty Thousand Dollars (\$880,000.00) (the "Gross Settlement Amount") to be paid by Defendant on the condition that all of the material conditions set forth above in Section III(A) have occurred, in full satisfaction of all claims released under this Agreement, and includes all individual payments to Class Members and PAGA Group Members, Enhancement Payment to Plaintiff, the PAGA Settlement Amount (defined below), Attorneys' Fees and Costs to Class Counsel, payment of settlement administration fees and costs to the Settlement Administrator, and any other costs or expenses related to the settlement incurred by either Plaintiff, Nationwide, or the Parties' counsel. Defendant shall be separately responsible for employer-side payroll taxes (including, without

limitation, FUTA, SUTA and the employer portion of FICA, Medicare and any applicable state or local employment taxes) which shall not be paid from the Gross Settlement Amount. The Parties agree that, subject to this paragraph and Section XIII(B), neither the Court nor the claims administrator shall have any power to increase the Gross Settlement Amount and under no circumstances shall Defendant be obligated to pay any amount over the Gross Settlement Amount under the terms of this Agreement except as provided for in this Agreement. This Settlement shall be a non-reversionary Settlement. None of the Gross Settlement Amount will revert to Defendant.

- C. **PAGA Penalties.** The Parties agree that Defendant will pay a total of Fifty Thousand Dollars (\$50,000.00) to PAGA Group Members and the California Labor and Workforce Development Agency (LWDA) from the Gross Settlement Amount in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law that were alleged or could have been alleged to have been violated based on the facts alleged and theories asserted in the complaints and notices to the LWDA filed by Plaintiff in the Actions (“**PAGA Settlement Amount**”). Pursuant to PAGA, Seventy Five Percent (75%) of the PAGA Settlement Amount will be paid to the LWDA (the “**LWDA Payment**”), and the remaining Twenty-Five Percent (25%) will be paid to all PAGA Group Members (“**PAGA Group Payment**”). The 25% to be paid to PAGA Group Members shall be distributed based on the number of pay periods worked by that PAGA Group Member in a nonexempt California position during the PAGA Period (defined as September 23, 2022 through the date of preliminary approval or April 14, 2025, whichever date comes first) in accordance with the methodology set forth in Section VIII(E) herein. The Court’s reduction or increase of the PAGA Settlement Amount is not a material term of this Agreement. If the Court approves a lesser amount or a higher amount than that requested by Class Counsel for the PAGA Settlement Amount, the Parties will not object to such determination, the other terms of this Agreement shall apply and the Net Settlement Amount (defined below) to be distributed to the Class Members will be adjusted accordingly.
- D. **Enhancement Payment.** From the Gross Settlement Amount, \$5,000.00 will be allocated to Plaintiff for initiating the Actions and providing services in support of the Actions (“**Enhancement Payment**”). The Enhancement Payment is in addition to any Individual Settlement Payment Plaintiff is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff’s request for an Enhancement Payment that does not exceed this amount. If the Court approves an Enhancement Payment less than the amount requested, the Settlement Administrator will retain the remainder in the Net Settlement Amount (defined below). Plaintiff agrees that the Settlement Administrator will not withhold any taxes from the Enhancement Payment, will issue a Form 1099 or other appropriate tax form consistent with the classification of the Enhancement Payment. Plaintiff acknowledges and agrees that Defendant and its counsel have made no representations regarding the proper tax treatment of the Enhancement Payment. Plaintiff agrees, covenants, and represents that Plaintiff shall be solely responsible

for paying any taxes and penalties payable on the Enhancement Payment and that Plaintiff shall defend, indemnify, and hold Defendant and the Released Parties (defined below) harmless from any claims, demands, actions, causes of action, losses, costs, attorneys' fees, penalties, or expenses arising from any classification of the Enhancement Payment as taxable income.

- E. **Attorneys' Fees and Costs.** "**Attorneys' Fees and Costs**" means the amount allocated to Class Counsel for the work they have performed in furtherance of the Actions and for reimbursement of litigation expenses incurred to prosecute the Actions. Subject to Court approval, the following payments are to be made from the Gross Settlement Amount to Class Counsel: (i) attorneys' fees actually awarded by the Court in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$308,000.00) ("**Attorneys' Fees**"); and (ii) Plaintiff's verified actual litigation costs and expenses actually awarded by the Court up to \$25,000.00 ("**Litigation Costs**"). Defendant will not oppose requests for these payments provided that they do not exceed these amounts. If the Court approves Attorneys' Fees and/or Litigation Costs less than the amounts requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount. The Settlement Administrator will issue one or more IRS 1099 Forms in connection with the payment of the Class Counsel Attorneys' Fees and Attorneys' Costs.
  
- F. **Settlement Administration Costs.** The costs of the Settlement Administrator, including those costs incurred in mailing the Class Notice to the Class Members as required by this Agreement, will be paid from the Gross Settlement Amount and shall not exceed Eleven Thousand Eight Hundred Eighty Dollars (\$11,880.00) based on a written bid received from the Settlement Administrator obtained by the Parties. All disputes relating to the Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if necessary. To the extent the Settlement Administration Costs are less or the Court approves payment less than \$11,880.00, the Settlement Administrator will retain the remainder in the Net Settlement Amount for distribution to the Participating Class Members.
  
- G. **Payments to Participating Class Members.** The "**Net Settlement Amount**" means the portion of the Gross Settlement Amount remaining after subtracting the following payments: Attorneys' Fees and Costs to Class Counsel actually awarded by the Court, the Enhancement Payment to Plaintiff actually awarded by the Court, payment to the Settlement Administrator for settlement administration fees and costs, and the PAGA Settlement Amount. The Net Settlement Amount will be distributed to "**Participating Class Members**" (i.e., those Class Members who do not submit valid Requests for Exclusion). Class Members who do not opt out will be entitled to their pro rata share of the Net Settlement Amount ("**Individual Settlement Payment**"), calculated in accordance with the formula set forth in Section VIII(D).

#### IV. SETTLEMENT ADMINISTRATOR

- A. **Appointment of Settlement Administrator.** The Parties request that the Court appoint Apex Class Action Administration as Settlement Administrator. The Settlement Administrator will be responsible for the administration of the settlement terms set forth herein, and all related matters. Among other responsibilities, the Settlement Administrator will publish notice of the settlement to Class Members through the distribution of written notice to Class Members based on the list provided by Defendant, and issue to Class Members who do not opt-out an IRS Form W-2 and IRS Form 1099 for all amounts paid under this settlement as appropriate, making all deductions and withholdings required under law. The Settlement Administrator will calculate and disburse all payments due under this Settlement Agreement. The Individual PAGA Amount paid to PAGA Group Members will be issued separately from the Individual Payment, if any. The Settlement Administrator will also mail a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. The Settlement Administrator will also issue a 1099 form to Class Counsel for sums they received under this Agreement as awarded by the Court. In addition, the Settlement Administrator will notify the Parties of timely and untimely Objections and requests for exclusion received; notify the Parties of any disputes by Class Members of the number of Individual Work Weeks and/or persons claiming to be Class Members and resolve any disputes resulting from same; make all other required settlement payments and tax remissions pursuant to the terms of this Agreement and as directed by the Court; and perform such other duties as are described in this Agreement and/or as are customarily performed by settlement administrators. Among its other duties as described in this Agreement, the Settlement Administrator shall provide counsel for the Parties with a weekly report showing the number of opt-outs and Objections received as well as declarations as required by the approval process of this Settlement. The Parties agree to provide any reasonable information requested by the Settlement Administrator needed to effectively administer the settlement.

#### V. NOTICE OF SETTLEMENT TO CLASS MEMBERS AND PAGA GROUP MEMBERS

- A. **Class Data for Settlement Administrator.** Within **thirty (30) calendar** days after entry of the Court's preliminary approval order that includes all of the provisions identified in Section II(A)(2), Defendant shall provide to the Settlement Administrator the following information for each Class Member and/or PAGA Group Member in a password protected Microsoft Excel format: name, last known address, Social Security number, and the number of Individual Workweeks and/or Individual PAGA Pay Periods attributable to each Class Member/PAGA Group Member ("**Class Data**"). To protect Class Member's 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, restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement, and under no circumstances shall the Administrator provide the Class Data to Class Counsel.

1. Within three (3) calendar days of receipt of the Class Data by the Settlement Administrator, the Settlement Administrator shall notify Class Counsel that the Class Data has been received and provide to Class Counsel, without revealing any confidential information (such as names, Social Security Numbers, contact information, or other personally identifiable information), the number of Class Members along with the total Workweeks worked by all Class Members.
- B. **Confidentiality Of Class Member Contact Information And Data.** The contact information is being provided confidentially, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the Class Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement. The Settlement Administrator shall return the Class Data to Defendant or confirm its destruction upon completion of the Settlement Administrator's duties.
- C. **Mailing Of Class Notice.** The Settlement Administrator shall mail the Class Notice to Class Members **within fourteen (14) calendar days** of receiving the Class Data from Defendant. The Settlement Administrator shall send the Class Notice via First Class U.S. Mail, using the most current, known mailing address for each Class Member and PAGA Group Member based on information provided by Defendant. Upon receipt of this information from Defendant, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes.
- D. **Re-mailing Of Returned Notices.** Any mailing returned to the Settlement Administrator as undeliverable shall be sent **within three (3) business days** via First Class U.S. Mail to the forwarding address affixed thereto, if applicable. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address again using a robust skip trace database to update and correct any known or identifiable address changes. Following this procedure, the Settlement Administrator shall perform a re-mailing via First Class U.S. Mail **within three (3) business days**. It shall be presumed that those Class Members whose re-mailed Class Notices are not returned to the Settlement Administrator as undeliverable within **thirty (30) calendar days** after re-mailing, actually received the Class Notice to the maximum extent permitted by law. The Settlement Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- E. **Content Of The Notice Of Class Action Settlement.** The Class Notice shall be in the form mutually agreed to by the Parties attached to this Agreement as **Exhibit A**. The Class Notice, among other things, informs Class Members of their right to decline to participate in the class action portion of the settlement established by this Agreement, so long as the Class Member submits to the Settlement Administrator

a valid Request for Exclusion on or before the Response Deadline (defined below), accurately describes the scope of the release, provides all deadlines and material terms of the Settlement, Class Counsel's contact information, a URL to a website maintained by the Settlement Administrator that has links to the Class Notice and the most important publicly filed documents in the case; and for persons who wish to review the Court's docket in this case, the URL for the Court's electronic filing and service website. The Class Notice also states that a Class Member's right to opt out applies only to the class action portion of the Settlement and that no opt out right applies to the settlement of PAGA claims. It shall be presumed that each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable **within thirty (30) calendar days** after mailing or remailing (as described above in Section V(D)) actually received it to the maximum extent permitted by law.

- F. **Proof Of Mailing.** At least 16 court days prior to the Final Settlement Approval Hearing, the Settlement Administrator shall provide a finalized and executed declaration of due diligence and proof of mailing with regard to mailing of the Class Notice to Class Counsel and Defendant's Counsel, which Class Counsel shall in turn provide to the Court. **No later than 10 business days** before the final executed declaration is due to be filed by Class Counsel, which is at least 16 days prior to the Final Settlement Approval Hearing, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel a final draft of the declaration for review.
- G. Counsel for the Parties shall not attempt in any way to initiate contact or initiate communications with any Class Member other than through the Class Notice, to discuss the Settlement, except as provided in this Agreement and to the extent any Class Member identified by the Settlement Administrator as to whom the Class Notice is believed by the Settlement Administrator to have been undeliverable, in which case counsel for Defendant may make reasonable attempts to secure accurate contact information for such Class Member. Notwithstanding the foregoing: (i) Class Counsel may respond to questions about the Settlement by Class Members who contact Class Counsel; (ii) counsel for the Parties may respond to questions by the Settlement Administrator about specific claims or questions of Class Members; and (iii) Defendant may communicate with its employees and the Class Members to discuss or describe the Settlement as set forth in this Agreement provided that such communications shall not interfere with or discourage participation in the Settlement.

## VI. THE OPT-OUT PROCEDURE

- A. **Class Members' Consideration Period.** The Class Notice shall state that Class Members who wish to exclude themselves from, or "opt out" of, the class action portion of the Settlement must submit a signed, written Request for Exclusion to the Settlement Administrator ("**Request for Exclusion**"). The deadline to submit a Request for Exclusion is **60 calendar days** from the original date that the Class Notice was mailed (the "**Response Deadline**") (plus an additional 14 days for Class Members whose Class Notice is re-mailed). To be valid, a Request for Exclusion

must be timely sent either by fax or by mail and be postmarked to the Settlement Administrator at the address listed in the Class Notice on or before the Response Deadline. The date of the postmark on the return mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. No later than five (5) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all members of the Class who have timely submitted requests for exclusion.

- B. **No right to opt out from PAGA settlement.** The Class Notice shall state that a Class Member's right to opt out applies only to the class action portion of the Settlement and that no opt out right applies to the settlement of PAGA claims. Accordingly, each PAGA Group Member, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Settlement Amount consistent with the calculation set forth in Section VIII(E) herein.
- C. **Opt-Out Procedures.** A Class Member who wishes to opt out of the class portion of the Settlement shall send a Request for Exclusion to the Settlement Administrator, which is a letter setting forth their name, the last four digits of the Social Security number of the Class Member requesting exclusion, the case name and number *Lemus v. Nationwide Mutual Insurance Co.*, Sacramento Sup. Ct. Case No. 23CV012222, and a statement that they request exclusion from the class and do not wish to participate in the settlement. To be valid, the Request for Exclusion must: (i) reasonably communicate the Class Member's election to be excluded from the class portion of the Settlement and contain sufficient Class Member identifying information; (ii) be signed by the Class Member; and (iii) be postmarked or fax stamped by the Response Deadline and submitted to the Settlement Administrator at the specified address or fax number. All Class Members who do not timely submit a valid Request for Exclusion shall be bound by the terms and conditions of this Agreement including the release of claims described herein, and shall also be bound by any Court orders related to this Agreement.
- D. **Effect of Opt-Out.** Class Members who successfully submit a Request for Exclusion ("Non-Participating Class Member") will not be entitled to a settlement payment for the class portion of this Settlement, and will not be bound by the class action release of this Agreement. To the maximum extent permitted by law, any Class Member who opts out of the Settlement may not object to the Settlement. If a Class Member submits both a Request for Exclusion and an Objection, the Class Member's Request for Exclusion will be deemed to invalidate the Objection. Class Members who submit valid and timely requests to opt out of the Settlement shall not receive a payment for settlement of Class claims pursuant to the Settlement, nor shall such Class Members be bound by the terms of the Settlement of their individual claims against Defendant pursuant to this Settlement. However, Class Members who submit a valid Request for Exclusion will nevertheless be bound by the settlement and release of PAGA claims in the Settlement to the extent they are a member of the PAGA Group and will receive a payment for their individual share of the PAGA Group Payment in settlement of

PAGA claims pursuant to the terms of this Agreement. Class Members who receive a Class Notice (or to whom the Class Notice is sent and not returned to the Settlement Administrator as undeliverable) but do not submit a valid and timely Request for Exclusion on or before the Response Deadline shall be deemed Participating Class Members and shall be bound by all terms of the Settlement and any Final judgment entered by the Court if the Settlement is approved by the Court.

- E. The Settlement Administrator shall review each Request for Exclusion upon receipt for timeliness, completeness, and validity. If a submitted Request for Exclusion is defective or incomplete, the Settlement Administrator will promptly notify the Class Member of the defect or deficiency and permit the Class Member fourteen **(14) days** from the date of the mailing of the deficient form or the Response Deadline to cure the defect (the “**Cure Deadline**”), whichever is later. Notwithstanding the foregoing, any Request for Exclusion that is cured will not be considered effective unless: (i) the original Request for Exclusion was postmarked or delivered by the Response Deadline; and (ii) the cured Request for Exclusion was postmarked or delivered by the Cure Deadline. Class Members shall only be permitted one opportunity to cure a defective Request for Exclusion.
- F. Unless otherwise permitted by this Agreement, only the Settlement Administrator has the right to contact Class Members who submit a Request for Exclusion. The Settlement Administrator shall not interfere with any Class Member’s right to submit a Request for Exclusion and shall communicate with a Class Member solely for purposes of determining the validity, completeness, and any defect in a submitted Request for Exclusion. The Settlement Administrator shall not have the authority to extend the Response Deadline or Cure Deadline except as directed by the Court or otherwise agreed to by the Parties in writing. The Settlement Administrator shall provide weekly updates concerning the status to both Class Counsel and counsel for Defendant, which will not in any way hamper or impede the right of Class Members to submit Requests for Exclusion.
- G. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to opt out of the Settlement or to appeal from the Final Approval Order.

## VII. OBJECTING TO THE SETTLEMENT

- A. **Objection Rights.** Class Members who wish to object to the Settlement may do so in writing by submitting a written objection (“**Objection**”) to the Settlement Administrator within the Response Deadline. Class Members may also appear at the Final Approval Hearing and present their objection orally, regardless of whether the Class Member submitted an Objection to the Settlement Administrator. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an Objection is timely submitted. The Settlement Administrator shall provide all such Objections to Class Counsel and Defendant’s counsel promptly upon receipt. The Court retains final authority with respect to the consideration and admissibility of any Class Member’s Objections. Plaintiff and

Defendant may respond in writing to any written Objections by **no later than seven (7) calendar days** before the Final Settlement Approval Hearing (or some other number of days as the Court shall specify) unless the Objection is received at a later time. Plaintiff and Defendant may respond to Objections orally at the Final Settlement Approval Hearing.

- B. **Objection Procedures.** The Objection must: (a) contain the case name *Lemus v. Nationwide Mut. Ins. Co.*, Sacramento Sup. Ct. Case No. 23CV012222; (b) contain the Class Member's full name and signature, and the last four (4) digits of their Social Security number; (c) contain a written statement of the grounds for the objection and supporting documents, if any; and (d) be sent by mail to the Settlement Administrator, postmarked on or before the Response Deadline. These instructions, as well as information regarding how to appear will be communicated in the Class Notice.
- C. Class Members who object to the Settlement may still participate in the Settlement. A Class Member who objects, but does not submit a Request for Exclusion, will remain a Participating Class Member. Accordingly, if the Court approves the Settlement, such Class Members will be bound by the terms of the Settlement in the same way as the Class Members who did not object. Only those Class Members who opt-out will not be bound by the class action portion of this Agreement.
- D. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel's Attorneys' Fees and Costs and/or the Enhancement Payment to Plaintiff.
- E. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- F. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written Objections to the Settlement or to appeal from the Court's Final Approval Order and judgment thereon.
- G. **Objecting Class Members Not Entitled to Attorneys' Fees.** The Parties expressly agree that objecting Class Members are not entitled to recover any attorneys' fees or costs from Class Counsel's fee award. This Agreement specifically bars recovery of Attorneys' Fees and Costs for objectors even if the objection has added genuine value to the Settlement. Furthermore, nothing in this Agreement, express or implied, creates any obligation on the part of Defendant to pay any attorneys' fees or costs to an objector, even if such fees and costs are ordered to be paid by the Court.
- H. **Waiver of Objection Rights.** To the fullest extent permitted by law, Class Members who fail to submit Objections in the manner specified in the Class Notice and/or fail to appear in Court to present verbal objections at the Final Approval Hearing shall be deemed to have waived any Objections and shall be foreclosed

from making any Objection, whether by appeal or otherwise, to this Agreement. To the maximum extent permitted by law, the Parties agree that only the Parties and/or Class Members who file a valid and timely Objection maintain the right to appeal. If the objecting Class Member does not formally intervene in the Actions or move to set aside the judgment and/or the Court rejects the Class Member's Objection, the Class Member will still be bound by the terms of this Agreement.

- I. **Binding Effect of Settlement.** Although some Class Members might not receive the Class Notice or timely submit a Request for Exclusion, as provided under this Agreement, due to inability to locate their current address following the procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this Agreement and the Final Approval Order and judgment to the maximum extent permitted by law.

## VIII. CALCULATION OF SETTLEMENT PAYMENTS TO CLASS MEMBERS AND PAGA GROUP

- A. Upon receipt of the Class Data, and prior to the mailing of the Class Notice, the Settlement Administrator shall review the information submitted by Defendant to confirm the number of Workweeks of each Class Member during the Class Period ("**Individual Workweeks**") for purposes of performing the calculations of Individual Settlement Payments (defined below). For purposes of this Agreement, a "**Workweek**" shall be defined as a 7-day week, beginning on Monday at 12:00am and ending on Sunday at 11:59pm, during which a Class Member employed by Defendant received compensation for regular hours worked as a nonexempt employee for at least one day in the Workweek for work actually performed in California during the Class Period, but shall not include any workweeks for which a Class Member was on a paid or unpaid leave of absence.
- B. The Settlement Administrator shall thereafter provide to Defendant's counsel and Class Counsel the total number of Class Members and Workweeks in the Class Data.
- C. **No Claims Process.** This Settlement does not require Class Members to submit a claim form to participate in the Settlement.
- D. **Individual Settlement Calculations and Payments.** No claims process shall be required of Plaintiff or Class Members in order to participate in the Settlement. Calculations of Individual Settlement Payments will be made as follows and shall be included in the Class Notice to each Class Member and based on the assumption that no Class Member opts out:
  1. The Payments made to Class Members shall be made from the Net Settlement Amount according to the following formula: Net Settlement Amount divided by the total of the number of workweeks worked during the Class Period by participating Class Members ("**Workweek Payment Rate**") multiplied by the total number of workweeks worked during the

Class Period by the individual Class Member at issue in a non-exempt position in California, less applicable withholdings (“**Individual Payments**”) and subject to a minimum of a single payment equaling the Workweek Payment Rate regardless of whether the class member actually worked during the Class Period. To the extent Class Members participated in or were included in the settlement in *Mostajo v. Nationwide* (“*Mostajo*”) (United States District Court, Eastern District of California, Case No. 2:17-cv-00350-JAM-AC), their respective individual workweeks will be valued as follows: to the extent their individual workweeks overlapped with and were included in the *Mostajo* settlement, the value of the overlapping workweeks will be reduced to 50% of the value of the unaffected workweeks. Thus, for example, if a Class Member worked a total of four workweeks in the Class Period, and two of that Class Member’s workweeks were included in the *Mostajo* settlement, and assuming a workweek value of \$10, that Class Member would be entitled to \$30 (two unaffected workweeks at \$10 each + two overlapping workweeks at \$5 each [ $\$10 \text{ per workweek} \times 50\%$ ]). And further provided that the Net Settlement allocation distributed to each Settlement Class Member will also be re-distributed pro rata based on any valid opt out. The Individual Payments will be reduced by any required deductions for each Class Member as set forth herein, including required withholdings or deductions.

- E. **Calculation of PAGA Group Members’ Individual Share of PAGA Group Payment.** Each PAGA Group Member’s individual share of the PAGA Group Payment shall be calculated on a pro rata basis, based on the following formula: The Settlement Administrator will calculate the total number of each PAGA Group Member’s Pay Periods during the PAGA Period (“**Individual PAGA Pay Periods**”), and the total number of Pay Periods for all PAGA Group Members in the PAGA Period (“**PAGA Group Pay Periods**”). To determine each PAGA Group Member’s Individual PAGA Payment, the Settlement Administrator will use the following formula: (a) dividing the amount of the PAGA Group Payment (\$12,500.00) by the total number of PAGA Group Pay Periods, and (b) multiplying the result by each PAGA Group Member’s Individual PAGA Pay Periods. There are no opt-out rights with respect to the PAGA portion of this Settlement. Accordingly, each PAGA Group Member, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Settlement Amount proportionate to the number of pay periods with working hours that he or she worked during the PAGA Period, subject to Court approval. All PAGA Group Members will receive at least a minimum Individual PAGA Payment equivalent to the figure paid to those PAGA Group Members who worked one pay period during the PAGA Period.

The individual shares of the PAGA Group Payment constitute penalties from which no deductions or withholdings will be taken. For purposes of this Agreement, a “**Pay Period**” shall be defined as any pay period during the PAGA Period in which a PAGA Group Member employed by Defendant received compensation for regular hours worked as a nonexempt employee for work actually performed in California for at least one day in the pay period but

shall not include any full pay periods for which a PAGA Group Member was on a paid or unpaid leave of absence or performed no work.

**F. Procedures for Class Members to Dispute Workweek Calculations:**

Defendant's records shall be determinative with respect to the number of Individual Workweeks for the Class Member and shall be presumptively valid, subject to this Section VIII(F). If a Class Member disagrees with the number of Individual Workweeks or Individual PAGA Pay Periods listed in his/her/their Class Notice, the Class Member may challenge the number of Individual Workweeks and/or PAGA Pay Periods by communicating with the Settlement Administrator via fax or mail by no later than the Response Deadline. The Class Member must provide the Settlement Administrator with a written statement explaining the basis for such challenge and supporting documentation, if any. In the absence of any contrary evidence, the Settlement Administrator is entitled to presume that the Individual Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Settlement Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Settlement Administrator shall promptly provide copies of all challenges to calculation of Individual Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Settlement Administrator's determination of the challenges.

**IX. TAX ALLOCATION**

- A. The Individual Settlement Payments to Class Members shall consist of the following: (i) 25% wages and (ii) 75% interest and penalties. Defendant will be responsible for the employer's share of payroll taxes on W-2 income, separate and apart from the Gross Settlement Amount.
- B. Because 25% of the gross amount of the Individual Settlement Payments to Class Members constitutes compensation for past services rendered, it shall be considered wages. Accordingly, the Settlement Administrator shall: (i) withhold from the applicable portion of the Individual Settlement Payment the Class Member's share of all appropriate payroll taxes, including federal and state income taxes; (ii) issue to each Class Member and appropriate taxing authorities a Form W-2 statement or its equivalent with respect to the appropriate portion of the Individual Settlement Payment; (iii) issue a Form-1099 to each Class Member and appropriate taxing authorities with respect to the portions of the Individual Settlement Payment representing penalties and interest and, to the extent a Class Member is also a PAGA Group Member, the individual share of the PAGA Payment; and (iv) notify Defendant of its share of any payroll taxes attributable to the employer for the 25% of the gross amount allocated to wages, which amount will be paid separately from the Gross Settlement Amount.
- C. **Allocation of Individual Settlement Payment Not Material.** The Court's approval of the allocation of the Individual Settlement Payment for Form 1099 income and Form W-2 income is not a material term of this Agreement. If the Court does not approve or approves a different allocation of the Individual

Settlement Payments, the Agreement shall remain intact and all other terms of this Agreement shall apply.

- D. Neither Defendant nor its counsel, nor Class Counsel makes any representation, and has made no representations as to the tax treatment or legal effect of the payments called for in this Settlement Agreement, and Plaintiff and Class Members are not relying on any statement, representation, or calculation by Defendant or its counsel, the Settlement Administrator, or Class Counsel in this regard. Plaintiff and Class Members understand and agree that Plaintiff and Class Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement Agreement. Plaintiff and any Class Member who receives any payment under this Agreement should consult with their tax advisors concerning the tax consequences of the Individual Settlement Payments they receive under the Settlement.

## **X. FINAL SETTLEMENT APPROVAL HEARING**

- A. Class Counsel shall be responsible for ensuring that at least the following documents are filed with the Court in advance of the Final Settlement Approval Hearing so that the Court will have a sufficient basis upon which to evaluate and approve the settlement:
1. A final declaration by the Settlement Administrator listing the following information: (i) attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, the mailing and re-mailing of the Class Notice (as applicable), the Class Notices returned as undelivered and attempts to locate Class Members; (ii) the total number of Requests for Exclusion the Settlement Administrator received (both valid and invalid) and a list of the names (with no other identifying information) of all persons who submitted timely and valid Requests for Exclusion; (iii) the number of Objections received and attaching copies of the Objections received so the Court can evaluate the merits of the Objections; and (iv) any other information required by the Court.
  2. A duly noticed motion for final approval, accompanying memorandum of points and authorities prepared by Class Counsel, and such other pleadings, evidence or other documents as may be necessary for the Court to determine that the Settlement documented by this Agreement is fair, adequate and reasonable.
  3. A Proposed Final Approval Order and judgment for the Court's signature, approving the material terms of the Settlement documented by this Agreement. The Final Approval Order will include the full text of the class and PAGA releases. The Parties shall jointly prepare the proposed final approval order and judgment to be submitted in the form mutually agreed to by the Parties.

4. The Parties agree that within five business days after the date the Final Approval Order and Judgment is entered by the Court in the PAGA Action, the Parties shall file a joint stipulation for the dismissal with prejudice in the Federal Action based on the judgment entered in the PAGA Action. The Parties agree to take any other necessary steps to dismiss the Federal Action with prejudice, with fees and costs to be borne separately by each party. Class Counsel shall not be entitled to recover any additional fees or costs in the Federal action, including any fees for undertaking the dismissal described in this paragraph.
5. The Parties will cooperate to finalize the motion for final settlement approval and supporting papers to be prepared by Class Counsel. Class Counsel shall also provide a draft of the motion for final settlement approval and supporting papers, and an opportunity to provide comments thereto, to Defendant's counsel at least fifteen (15) business days prior to the filing deadline for the motion. Class Counsel shall not file a motion for final settlement approval without first confirming with counsel for Defendant that Defendant has no objection to any matters stated within the final approval papers.
6. The Motion for Final Settlement Approval will include Class Counsel's applications for Attorneys' Fees and Costs and the Enhancement Payment. However, the Court's decision to award less than the amounts requested for Class Counsel's Attorneys' Fees and Costs and/or the Enhancement Payment to Plaintiff does not constitute a material modification to the Agreement and will not terminate this Agreement.

## **XI. PAYMENT TO CLASS MEMBERS AND PAGA GROUP MEMBERS**

- A. No later than **fourteen (14) calendar days** after the Effective Date (defined in Section I(D)), Defendant shall ensure a wire transfer to a bank account designated by the Settlement Administrator is effectuated for the Gross Settlement Amount plus Defendant's separate portion of the employer-side payroll taxes. No later than **thirty (30) calendar days** after the Effective Date, the Settlement Administrator shall issue payments to Class Members and/or PAGA Group Members pursuant to the terms of this Agreement from the above-mentioned designated bank account and issue all necessary and proper tax forms.
- B. The Settlement Administrator shall mail the Individual Settlement Payments and Individual PAGA Payments by First Class U.S. Mail to each Class Member's and/or PAGA Group Member's last known address, postage prepaid. Checks shall be valid for **180 calendar days** from the date of mailing (the "**Check Cashing Deadline**"), and the face of each check shall prominently state the Check Cashing Deadline, when the check will be voided. Class Members who do not cash their settlement checks within 180 calendar days after mailing by the Settlement Administrator shall still be bound by the Settlement and the release of claims provided therein. It shall be presumed that each Class Member received his, her,

or their Individual Settlement Payment (and PAGA Group Member payment, if applicable) on the date the payment was deposited in the United States mail, unless the payment is returned to the Settlement Administrator within the Check Cashing Deadline. Any check returned by the post office with a forwarding address will be re-mailed within **five (5) calendar days** by the Settlement Administrator to that forwarding address via First Class U.S. Mail. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address 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 Settlement Administrator with Participating Class Members, and it shall then perform a re-mailing within **7 calendar days** of receiving a returned check. The Settlement Administrator need not take further steps to deliver checks to Participating Class Members whose re-mailed checks are returned as undelivered. The Settlement Administrator shall promptly send a replacement check to any Participating Class Member whose original check was lost or misplaced, requested by the Participating Class Member prior to the void date.

- C. In accordance with California Code of Civil Procedure Section 384, any checks returned to the Settlement Administrator by the post office as undeliverable after the Settlement Administrator takes steps set forth above, and all funds from checks that are not cashed by the Check Cashing Deadline, shall be distributed as follows:
1. The amount of any Individual Settlement Payments and Individual PAGA Payments that remain undeliverable or uncashed 180 calendar days after the postmarked date of the initial mailing of the checks for Individual Settlement Payments and/or Individual PAGA Payments will be transferred to the California State Controller’s Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., in the name of and for the benefit of the individual who did not cash his or her check, until such time that he or she claims his or her property or as otherwise required by law. The Participating Class Member and/or PAGA Group Member will nonetheless remain bound by the Settlement. The Parties agree that this disposition results in no “unpaid residue” within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Class Members, whether or not they all cash their Individual Settlement Payments and/or Individual PAGA Payments.
  2. The Settlement Administrator shall notify the Parties’ counsel of the total amount that was actually paid to the Class Members and the amount of funds that are unclaimed.
  3. At a date set by the Court for a final accounting in accordance with California Code of Civil Procedure Section 384(b), the Parties shall advise the Court of the total amount that was actually paid to Class Members under this Agreement and the amount of funds that are unclaimed by Class Members and transmitted to the California State Controller’s Unclaimed Property Fund.

- D. **No Impact On Contributions To Employee Benefit Plans.** None of the payments made pursuant to this Agreement shall be considered to alter the terms or to grant any rights to additional payments under any employee benefit plans. None of the payments made pursuant to this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 (“**ERISA**”). Any distribution of payments to Plaintiff or Class Members shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any bonus or incentive plan, benefit plan sponsored or contributed to by Defendant or any jointly-trusted benefit plan, or for purposes of calculating the regular rate of pay. For purposes of this Agreement, “benefit plan” means each and every “employee benefit plan,” as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

**XII. PAYMENT OF ATTORNEYS’ FEES AND COSTS TO CLASS COUNSEL; SETTLEMENT ADMINISTRATION EXPENSES; ENHANCEMENT PAYMENT**

- A. No later than **thirty (30) calendar days** after the Effective Date, the Settlement Administrator shall transfer the following amounts, as awarded by the Court:
1. To Class Counsel, the amounts ordered by the Court for all attorneys’ fees and costs incurred in prosecuting the Action;
  2. To the Settlement Administrator, the amounts ordered by the Court for all its expenses;
  3. To Plaintiff, the amount ordered by the Court for the Enhancement Payment; and
  4. To the LWDA, the LWDA Payment.

**XIII. RIGHT TO INCREASE GROSS SETTLEMENT AMOUNT OR CHANGE END DATE OF RELEASE PERIOD BASED ON WORKWEEKS OF CLASS MEMBERS.**

- A. Based on its records, Nationwide represented for purposes of mediation that there are an estimated 110,000 aggregate workweeks worked by Class Members through January 15, 2025. If the total number of workweeks through the end of the Class Period increases more than 10% above 110,000 (for a total of 121,100 aggregate

workweeks or more), Defendant has the option of either of the following Section XIII(B)(a) or (b):

- a. Increasing the Gross Settlement Amount proportionately by the Workweeks worked by Class Members above the ten percent threshold (for example, if the number of total Class Workweeks increases by eleven percent (11%), the Gross Settlement Amount shall increase by one percent (1%).) Workweeks shall include only those workweeks where a Class Member rendered actual services to Defendant in California as a nonexempt employee (i.e. excludes any workweeks where a Class Member was on leave or worked in an exempt position or outside of California); OR
- b. Alternatively, Defendant may elect to change the end date of the release period to be the latest date -prior to which the number of Workweeks worked by the Class exceeded 121,100 workweeks.

Defendant must make an election between options (a) and (b) above prior to the mailing of the Class Notices such that the Class Notice contains a definitive class period and Gross Settlement Amount.

- B. The Parties agree that, except as set forth in this Section XIII and the employer share of payroll taxes, under no circumstances shall Defendant be obligated to pay any amount that exceeds the Gross Settlement Amount.

#### **XIV. INVALIDATION OF AGREEMENT FOR FAILURE TO SATISFY CONDITIONS**

- A. In the event the Court fails to enter final judgment approving the Settlement consistent with the terms set forth in this Agreement after the Parties have exhausted all reasonable efforts to amend the Agreement to address the Court's concerns, or such final judgment is vacated or reversed, the Actions shall proceed as if no settlement had been attempted and revert back to their respective prior procedural posture as existed at the time of execution of this Agreement. In such event, nothing in this Agreement nor in any documents prepared or submitted to the Court relating to this Agreement shall be used, construed or admissible as evidence by or against any Party as a determination, admission, or concession of any issue of law or fact in the Actions, or in any other proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Actions as if this Agreement never existed. Further, in such event, the Parties shall each pay half of the costs of administration that have been incurred by the Settlement Administrator.
- B. **Defendant's Right to Withdraw.** If, prior to the Final Settlement Approval Hearing, the number of persons who submit valid and timely Requests for Exclusion exceeds five percent (5%) of the total number of Class Members, then Defendant shall have the sole and absolute discretion to withdraw from this Agreement by providing written notice to Class Counsel and the Court within fourteen (14) days of receiving notice from the Settlement Administrator that 5% or more of the individual Class Members opted out of this settlement; late elections

will have no effect. If Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement. If Defendant elects to withdraw from this Agreement pursuant to this paragraph, Defendant shall be solely responsible for any costs of administration that have been incurred by the Settlement Administrator at the time Defendant elects to withdraw from this Agreement.

- C. If this Agreement is terminated for failure to satisfy any of the material terms or conditions, Defendant shall not be obligated to create or maintain any type of settlement fund and shall not be obligated to make any settlement payment to any Class Member, PAGA Group Member, LWDA, Class Counsel, or to Plaintiff.

## **XV. RELEASES, REPRESENTATIONS AND WARRANTIES**

### **A. Class Member Release**

1. Release of Claims by Plaintiff and Class Members. In consideration of the monetary sum provided by Nationwide and upon the Effective Date and Defendant's funding of the Gross Settlement Amount, Plaintiff and each Class Member who does not timely opt-out of the settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge Nationwide, and its respective former and present parents, subsidiaries, affiliated corporations and entities, successors, insurers, clients, and vendors and independent contractors through which Nationwide conducts business, and each of their respective current, former, and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, legal representatives, or any individual or entity which could be jointly liable with Nationwide and all persons or entities acting by, through, under, or in concert with any of them ("**Released Parties**"), from any and all claims, rights, demands, liabilities, and causes of action of any kind arising from the alleged violation of any provision of common law, California law and/or federal law that occurred during the Class Period that were pled in either Action, or Plaintiff's LWDA letter, or which could have been pled based on the facts alleged and theories asserted in either Action, including claims for: failure to timely pay all wages (California Labor Code §§ 201, 202, 203, 204, 210, 558); failure to pay all minimum, overtime and reporting time wages, including with respect to the rate at which such wages are paid (California Labor Code §§ 204, 222, 218, 218.5, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, and applicable sections of the relevant Order of the Industrial Welfare Commission); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide sick pay or properly pay

sick time, including with respect to the rate at which it was paid (California Labor Code §§ 233, 246, 248, 248.5); failure to produce requested records (Cal. Lab. Code §§ 226, 1198.5); failure to provide information upon hiring (Cal. Lab. Code § 2810.5); failure to pay vested vacation time at termination, including with respect to the rate at which it was paid (California Labor Code §§ 227.3, 558); failure to reimburse all necessary business expenses, including but not limited to expenses related to cell phones, internet, home office expenses/supplies, job-related training courses, transportation, mileage, lodging, uniforms, and more (California Labor Code §§ 2802, 2804); unlawful deductions (California Labor Code § 221); violation of the IWC California Wage Orders; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3, 558); failure to maintain records (California Labor Code § 226, 1174, 1174.5); unfair competition in violation of California Business and Professions Code section 17200 et seq.; violation of the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.); violation of the California Investigative Consumer Reporting Agencies Act (California Civil Code § 1786 et seq.); and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof, and that arose during the Class Period ("Released Claims"). The Released Claims do not include claims to enforce this Agreement or the Settlement Agreement, or claims that may not be released as a matter of law, including, for example, claims for vested benefits under an ERISA, 401(k), or similar plan, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside of the Class Period.

- a) It is the Parties' intent that this settlement and the judgment entered thereon shall have res judicata effect precluding Plaintiff and the Participating Class Members from initiating any other proceedings regarding claims released pursuant to this Agreement.

## **B. PAGA Release of Claims**

1. Release of PAGA Claims. For the avoidance of doubt, Class Members/PAGA Group Members have no opt out rights as to the PAGA portion of the settlement of the Actions. Accordingly, upon the Effective Date, in consideration of the PAGA Settlement Amount, Plaintiff, on behalf of herself and the State of California, and all PAGA Group Members, waive, fully release and forever discharge the Released Parties from any and all claims under PAGA arising from and/or relating in any way to the claims pled in the Actions, or Plaintiff's LWDA letter, or that could have been asserted based on the facts alleged or theories asserted in the Actions against Nationwide, including, but not limited to, claims for: failure to timely pay all wages (California Labor Code §§ 201, 202, 203, 204, 210, 558); failure to pay all minimum, overtime and reporting time wages, including with respect to the rate at which such wages are paid (California Labor Code §§

204, 218, 218.5, 222, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198 and applicable sections of the relevant Order of the Industrial Welfare Commission); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide sick pay or properly pay sick time, including with respect to the rate at which it was paid (California Labor Code §§ 233, 246, 248, 248.5); failure to produce requested records (Cal. Lab. Code §§ 226, 1198.5); failure to provide information upon hiring (Cal. Lab. Code § 2810.5); failure to pay vested vacation time at termination, including with respect to the rate at which it was paid (Cal. Lab. Code §§ 227.3, 558); failure to reimburse all necessary business expenses, including but not limited to expenses related to cell phones, internet, home office expenses/supplies, job-related training courses, transportation, mileage, lodging, uniforms, and more (California Labor Code §§ 2802, 2804); unlawful deductions (California Labor Code § 221); violation of the IWC California Wage Orders; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3, 558); failure to maintain records (Cal. Lab. Code § 226, 1174, 1174.5); and that arose on or before the date of preliminary settlement approval.

#### **C. Representations and Warranties by Plaintiff**

Plaintiff hereby represents, covenants, and warrants that Plaintiff shall not in any way hereafter commence, join, aid, or assist others in pursuing any claim, charge or action against any of the Released Parties for any acts or omissions released under this Agreement.

#### **D. No Misrepresentation**

The Parties understand that the facts with respect to which this Agreement is entered into may be materially different from those the Parties now believe to be true. The Parties accept and assume this risk, and agree that this Agreement, including specifically the releases contained herein, shall remain in full force and effect, and legally binding, notwithstanding the discovery or existence of any additional or different facts, or any claims with respect to those facts.

### **XVI. CONFIDENTIALITY**

The Parties and their counsel shall keep confidential all settlement communications regarding the negotiation and drafting of this Settlement Agreement. Neither the Parties nor their counsel will issue any press release or other public representation regarding the settlement, other than as necessary to obtain court approval and effectuate the terms of the settlement. Provided, however, that the Court may be notified, if necessary prior to the filing of the motion for preliminary approval, that “The Parties have settled the case subject to court approval” while not mentioning the terms. The Parties and their counsel further agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about the Actions. Class Counsel will not communicate with other class counsel about this settlement, nor utilize it in any way in their marketing or advertising materials or website. Nothing in this

paragraph shall restrict the Parties from making any disclosures necessary to seek Court approval or to communicate with the Class Members consistent with the terms of this Agreement.

## **XVII. MISCELLANEOUS PROVISIONS**

### **A. Acknowledgment that the Settlement is Fair and Reasonable**

The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Actions, which was reached after non-collusive, arm's-length negotiations and mediation and in the context of adversarial litigation, considering all relevant factors, present and potential, including the risk of continued litigation. The Parties agree, covenant, and represent that this Agreement, shall constitute a compromise of, and full accord and satisfaction of disputed claims. The Parties further agree, covenant, and represent that neither this Agreement nor any actions undertaken by Defendant in satisfaction of this Agreement shall constitute, or be construed as, an admission of any liability or wrongdoing by Defendant at any time, or as an admission by Defendant that class certification, or litigation on a representative basis is proper in the Actions. By entering into this agreement, Defendant does not admit liability in this Actions. Defendant expressly denies that it has violated any law, breached any agreement or obligation to Plaintiff or the Class Members, or engaged in any wrongdoing with respect to Plaintiff or the Class Members.

### **B. Representation by Counsel**

The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiff warrants and represents that Plaintiff is fully authorized to enter into this Agreement and the terms and conditions thereof, that there are no liens on the Agreement, and that after entry by the Court of the orders specified in this Agreement, the Settlement Administrator may distribute funds to Class Members, PAGA Group Members, Class Counsel, the LWDA, and Plaintiff as provided by this Agreement.

### **C. Deadlines Set by this Agreement and Extensions of Time**

If any deadline set by this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline shall be deemed to fall on the next day that is not a Saturday, Sunday, or Court holiday. Further, the Parties may, by mutual agreement, agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, subject to Court approval when required.

### **D. Notice**

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by first class mail, or email to the undersigned persons at their respective addresses as set forth below:

**Counsel for Plaintiff and the Class Members:**

**D.LAW, INC.**  
Emil Davtyan  
emil@d.law  
David Yeremian  
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**Counsel for Defendant:**

**JONES DAY**  
Koree Wooley  
kwooley@jonesday.com  
Cindi Ritchey  
critchey@jonesday.com  
4655 Executive Drive, 15<sup>th</sup> Floor  
San Diego, CA 92121  
Telephone: (858) 314-1200

**E. Memorandum of Understanding Superseded by this Agreement**

Upon the date that this Agreement becomes fully executed by all Parties, this Agreement shall supersede the Memorandum of Understanding between the Parties that was fully executed on February 21, 2025.

**F. Incorporation by Reference**

The terms of this Agreement include the Recitals, which are incorporated by this reference as though fully set forth herein.

**G. Captions**

The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

**H. Mutual Preparation**

This Agreement has been jointly prepared by the Parties and their counsel. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement, and agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

**I. Waiver of Right to Appeal**

As part of this Settlement, Plaintiff waives her right to file an appeal and/or a writ or any challenge whatsoever to the terms of the impending stipulated judgments contemplated in the Actions in accordance with this Agreement.

**J. Entire Agreement**

This Agreement comprises the Parties' entire agreement. There are no other agreements, written or oral, express or implied, between the Parties with respect to the subject matter hereof except this Agreement. The Parties acknowledge that no representations, statements or promises made by any other party, or by their respective agents or attorneys, have been relied upon in entering into this Agreement. The Parties explicitly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement.

**K. Amendment or Modification**

This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by a duly authorized representative of the Parties hereto, which writing shall expressly state the intent of the Parties to modify this Agreement.

**L. Severability**

The Parties to this Agreement agree, covenant, and represent that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each provision of this Agreement shall be considered severable, except for the release provisions of Section XV of this Agreement. If the Court finds the release provisions of this Agreement to be unenforceable or invalid after the Parties' efforts to resolve any issues addressed by the Court as specified in Section XVII(P), then this Agreement shall become null and void and Defendant shall have no obligation to make any payments pursuant to this Agreement. If the Court finds any provision other than the release provisions of Section XV, or part thereof, to be invalid or unenforceable for any reason, that provision, or part thereof, shall remain in full force and effect to the extent allowed by law, and all of the remaining provisions of this Agreement shall remain in full force and effect.

**M. Waiver**

No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

**N. Execution and Counterparts**

This Agreement, and any other documents required or contemplated to be executed to consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. Any party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an e-mail to counsel for the other party. Any signature made and transmitted by facsimile, email, DocuSign, or as an attachment to an e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party who transmits the signature page.

**O. Binding on Successors and Assigns**

This Agreement shall be binding upon, and shall inure to the benefit of the Parties, including Participating Class Members and PAGA Group Members, as well as their respective heirs, spouses, children, assigns, executors, administrators, successors, beneficiaries, subsidiaries, conservators, representatives, attorneys, estates, divisions and affiliated corporations and partnerships, past and present, and trustees, directors, officers, shareholders, partners, agents and employees, past and present, of the Parties.

**P. California Law Governs**

All terms of this Agreement will be governed by and interpreted according to the laws of the State of California.

**Q. Use and Return of Class Data**

Information provided to Class Counsel pursuant to Cal. Evid. Code §1152 or similar applicable privileges, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 60 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds and a written request is made by Defendant to Class Counsel, Plaintiffs shall destroy all paper and electronic versions of Class Data and other information or documents provided to Class Counsel in connection with the mediation, other settlement negotiations, or in connection with the Settlement by Defendant or the Administrator and confirm in writing to Defendant that all such documents and data have been destroyed.

**R. Cooperation in Administration**

The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order, suggestion, or recommendation of the Court, or otherwise, to

effectuate this Agreement and the terms set forth herein. The Parties' efforts to continue to cooperate and make all best efforts to obtain approval of this Agreement shall only cease after the Parties have exhausted all opportunities to amend or modify this Agreement, including seeking the assistance of the mediator, and the filing of any motions to obtain approval of this Agreement.

**S. All Terms Subject to Final Court Approval**

All amounts and procedures described in this Agreement herein will be subject to final Court approval.

**T. Disputes**

If the Parties have a dispute with regard to the language of this Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations, but if those efforts are unsuccessful, the Court retains full jurisdiction to interpret, construe, and enforce the terms of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the prevailing Party or Parties will be entitled to recover from the non-prevailing Party or Parties reasonable attorney's fees and costs, including expert witness fees, in connection with any enforcement actions.

**U. Judgment and Continued Jurisdiction**

The Court shall retain jurisdiction pursuant to Code of Civil Procedure Section 664.6 over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and Settlement including post-judgment matters as may be appropriate under court rules or as set forth in this Agreement.

**V. Interim Stay of Proceedings.**

The Parties agree to refrain from further litigation, except such proceedings as necessary to seek and obtain preliminary and final settlement approval. If this Agreement is not finally approved, the Parties agree that they will revert to their positions in the Actions prior to the time they entered into this Agreement, and no agreements set forth in this Agreement or any documents generated or orders issued related to this Agreement will be admissible in any future proceeding, in the Actions or in any other action.

*[Signatures on Next Page]*

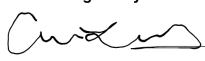
**THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

**PLAINTIFF**

Dated: 4/4/2025

DocuSigned by:



ANA LEMUS

**DEFENDANT**

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

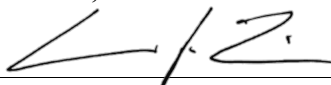
Title: \_\_\_\_\_

On behalf of NATIONWIDE MUTUAL  
INSURANCE COMPANY

Approved as to form and agrees to be bound by the confidentiality provisions in  
the Agreement:

**D.LAW, INC.**

Dated: 4/4/2025



David Yeremian

Alvin B. Lindsay

Enoch J. Kim

Antonia McKee

Attorneys for PLAINTIFF ANA LEMUS AND  
THE CLASS

**JONES DAY**

Dated: \_\_\_\_\_

Koree B. Wooley

Attorneys for NATIONWIDE MUTUAL  
INSURANCE COMPANY

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

**PLAINTIFF**

Dated: \_\_\_\_\_

\_\_\_\_\_  
ANA LEMUS  
\_\_\_\_\_

**DEFENDANT**

Dated: April 3, 2025 \_\_\_\_\_

\_\_\_\_\_  
*Nicholas P. Montean*  
Name: Nicholas P. Montean  
Title: V.P. HR  
On behalf of NATIONWIDE MUTUAL  
INSURANCE COMPANY

Approved as to form and agrees to be bound by the confidentiality provisions in the Agreement:

**D.LAW, INC.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
David Yeremian  
Alvin B. Lindsay  
Enoch J. Kim  
Antonia McKee  
Attorneys for PLAINTIFF ANA LEMUS AND  
THE CLASS

**JONES DAY**

Dated: April 3, 2025 \_\_\_\_\_

\_\_\_\_\_  
*Koree B. Wooley*  
Koree B. Wooley  
Attorneys for NATIONWIDE MUTUAL  
INSURANCE COMPANY

# **EXHIBIT A**

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

*Ana Lemus v. Nationwide Mutual Insurance Co.,  
Sacramento Superior Court Case No. 23CV012222*

*The Superior Court for the State of California authorized this notice. This is not a solicitation.  
This is not a lawsuit against you and you are not being sued.  
**This Notice affects your rights. Please read it carefully.***

**NOTICE OF CLASS ACTION SETTLEMENT**

To: All individuals who were employed by Nationwide Mutual Insurance Co. (“Nationwide”) as a nonexempt employee and based in California at any time during the period beginning on July 17, 2019 through [REDACTED].

**If you fit the description above, YOU ARE A CLASS MEMBER AND ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.** If you want to participate in this Class Action Settlement, no action is required. You will be automatically included in the Settlement and will receive a settlement payment, if the Court grants final approval to the Settlement. If you do NOT want to participate in the Settlement, then you must take action by [DATE], as described below.

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don’t Have To Do Anything To Participate In The Settlement.</b>                                                      | <p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Settlement Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Nationwide that are covered by this Settlement (Released Claims).</p> <p>Your payment will be mailed to you, automatically, after the Court grants final approval to the Settlement and final judgment is entered. <i>[You must, however, keep a current address on file with the Settlement Administrator to ensure delivery of your check to your current address.]</i></p>                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Update Your Contact And Address Information</b>                                                                          | <p>If necessary, update your address with the Settlement Administrator to ensure your check is sent to the correct address.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>You Can Opt Out of the Class Settlement But Not the PAGA Settlement</b><br><br><b>The Opt-Out Deadline is [REDACTED]</b> | <p>If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Settlement Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 12 of this Notice. <b>If you want to opt out of the Class Settlement, you must follow the instructions on page 7, section 12 and mail or fax your request to opt out to the Settlement Administrator no later than [DATE].</b> Untimely opt out requests will be rejected.</p> <p><b>You cannot opt-out of the PAGA portion of the proposed Settlement.</b> Nationwide must pay Individual PAGA Payments to all PAGA Group Members and the PAGA Group Members must give up their rights to pursue PAGA Group Members’ Released Claims (defined below).</p> |
| <b>You Can Object to the Settlement</b>                                                                                     | <p>All Class Members who do not opt out can object to any aspect of the proposed Settlement. See page 7 section 13 for instructions on how to object.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

|                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Written Objections Must be Submitted by [DATE]</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>You Can Participate in the Final Approval Hearing Set for [REDACTED]</b> | The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 13 of this Notice |

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **CALIFORNIA LAW STRICTLY PROHIBITS RETALIATION FOR PARTICIPATING OR ELECTING NOT TO PARTICIPATE IN THIS SETTLEMENT. NATIONWIDE WILL NOT TAKE ANY ADVERSE ACTION AGAINST OR OTHERWISE RETALIATE OR DISCRIMINATE AGAINST ANY CLASS MEMBER BECAUSE OF ANY ACTIONS YOU TAKE WITH RESPECT TO THE PROPOSED SETTLEMENT.**

## BASIC INFORMATION

### 1. Why Did I Get This Notice?

The Settlement covers all individuals who were employed by Nationwide as a nonexempt employee based in California at any time during the period beginning on July 17, 2019 through [REDACTED] ("Class Members"). According to Nationwide's records, you are a Class Member. The PAGA portion of the Settlement covers Class Members who worked at any time during the PAGA Period, defined as the period beginning on September 23, 2022 through [REDACTED] 2025 ("PAGA Group Members").

A Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuit, the Settlement, your legal rights, the benefits that are available, who is eligible to receive them, and how to get them.

The Honorable Lauri Damrell of Department 22 of the Sacramento Superior Court ("Court") is overseeing this class action. The case is known as *Ana Lemus v. Nationwide Mutual Insurance Co.*, Sacramento Superior Court Case No. 23CV012222 ("Action" or "Lawsuit").

On [DATE], the Court preliminarily approved the Settlement and directed the parties to issue this Notice. The Court will hold a Final Approval hearing on [DATE], at [TIME], in Department 22 of the Court located at the Gordon D. Schaber Sacramento County Courthouse, 720 9<sup>th</sup> Street, Sacramento, California 95814. The Final Approval Hearing may be continued to another date without further notice.

### 2. What Is This Lawsuit About?

This Lawsuit was brought by former employee Ana Lemus. The operative complaint asserts claims that Nationwide failed to: properly pay nonexempt employees all hourly and overtime wages earned at the correct rate of pay; pay at least minimum wage for all hours worked; provide compliant meal or rest breaks or compensation in lieu of those breaks at the correct rate of pay; timely pay all wages due during employment and at the termination of employment; reimburse business expenses; and provide accurate itemized wage statements and employment records. Plaintiff also alleges that Nationwide violated the Unfair Competition Law and contends that she and the aggrieved employees are entitled to recover penalties under the Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* A copy of the Complaint is available at [www.\[REDACTED\]](http://www.[REDACTED])

Nationwide denies all allegations in the Lawsuit and contends it complied with the California Labor Code and all other applicable laws. The Settlement is not an admission of any wrongdoing by Nationwide or an indication any law was violated.

The Court has not ruled on the merits of the claims asserted in the Lawsuit. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial.

### 3. Why Is There A Settlement?

The Court did not decide in favor of Plaintiff or Nationwide. There was no trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, the Parties have agreed to settle the Action on the terms summarized in this Notice.

This Settlement was reached after an exchange of extensive information about the facts and legal arguments in support of, and against, all of the claims raised in the lawsuit. By settling the lawsuit, the parties avoid the burden, expense and uncertainty of litigation.

## THE TERMS OF THE SETTLEMENT

### 4. What is the Settlement Amount?

Nationwide will pay \$880,000.00 as the Gross Settlement Amount (referred to as the “Gross Settlement Amount” or “GSA”). Nationwide has agreed to deposit the GSA into an account controlled by the Administrator of the Settlement. The Settlement Administrator will use the GSA to pay the Individual Settlement Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Settlement Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”).

#### Court-Approved Deductions from Gross Settlement Amount:

The Parties agreed to the following deductions from the GSA and will ask the Court to approve them at the Final Approval Hearing. These deductions are subject to Court approval:

- a. Settlement Administration Costs: The Court has approved Apex Class Action Administration to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$11,880.00 will be paid from the GSA to pay the Settlement Administration Costs.
- b. Penalties to the California Labor Workforce and Development Agency. \$50,000.00 of the GSA will be allocated to Plaintiff’s penalty claim under the Private Attorneys General Act of 2004 (“PAGA”). Of this amount, 75% (or \$37,500.00) will be paid to the California Labor Workforce Development Agency (the “LWDA”) in satisfaction of the claims for penalties under PAGA and the remaining 25% (\$12,500.00) will be the PAGA Group Payment that will be distributed to the PAGA Group Members.
- c. Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the GSA. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to 35% of the GSA (i.e., \$308,000.00), and litigation costs not to exceed \$25,000.00.
- d. Service Award to the Class Representatives. Class Counsel will ask the Court to award a Class Representative service payment of \$5,000.00 to Plaintiff Ana Lemus, as compensation for her work and effort in prosecuting this case, and for undertaking the risks of payment of costs in the event of an unsuccessful outcome of this Lawsuit.

Net Settlement Amount. The exact amount of attorneys’ fees, litigation costs, Class Representative service payment, PAGA Payment, and Settlement administration expenses will be determined by the Court at the Final Approval hearing. The remaining portion of the GSA, the “Net Settlement Amount” or “NSA,” is estimated to be \$[REDACTED]. The NSA will be paid entirely to all Class Members who do not request to be excluded (“opt out”) of the Settlement. **A claim form is not required.** Any portion of the NSA associated with a Class Member who chooses to opt out of the Settlement will be paid

to Class Members who participate in the Settlement. In other words, the entire amount of the NSA will be paid to Class Members who remain in the Class.

## **5. How Will The Settlement Payments Be Calculated?**

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

### **Individual Settlement Payments**

Payments made to Class Members shall be made from the Net Settlement Amount according to the following formula: Net Settlement Amount divided by the total of the number of workweeks worked during the Class Period by participating Class Members ("Workweek Payment Rate") multiplied by the total number of workweeks worked during the Class Period by the individual Class Member at issue in a non-exempt position in California, less applicable withholdings ("Individual Payments") and subject to a minimum of a single payment equaling the Workweek Payment Rate regardless of whether the class member actually worked during the Class Period.

The Individual Settlement Payments will be reduced by any required deductions or withholdings for each Class Member. To the extent Class Members and PAGA Group Members participated in or were included in the settlement in *Mostajo v. Nationwide Mutual Insurance Co* (Mostajo) (United States District Court, Eastern District of California, Case No. 2:17-cv-00350-JAM-AC), their respective Individual Work Weeks will be valued as follows: (1) to the extent their Individual Work Weeks overlapped with and were included in the *Mostajo* settlement, the value will be reduced to 50% of the unaffected Individual Work Weeks. Thus, for example, if a Class Member worked a total of four Individual Work Weeks in the Class Period, and two of that Class Member's workweeks were included in the *Mostajo* settlement, and assuming an Individual Work Week value of \$10, that Class Member would be entitled to \$30 (two workweeks at \$10 each + two workweeks at \$5 each [ $\$10 \text{ per workweek} \times 50\%$ ]).

### **Individual PAGA Payment**

The 25% to be paid to PAGA Group Members shall be distributed based on the number of pay periods in which the PAGA Group Member worked during the PAGA Period (defined as September 23, 2022 through [REDACTED]) compared to the aggregate number of pay periods in which all PAGA Group Members worked during the PAGA Period. The individual shares of the PAGA Group Payment constitute penalties from which no deductions or withholdings will be taken.

**Taxes Owed on Payments to Class Members.** Plaintiff and Nationwide are asking the Court to approve an allocation of 25% of each Individual Settlement Payment to taxable wages ("Wage Portion") and 75% interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Nationwide will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Settlement Payments on IRS 1099 Forms.

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

## **6. How much will my Settlement Payment be?**

Nationwide's records show you were employed by Nationwide in California as a nonexempt employee during the period of July 17, 2019 through \_\_\_\_\_ for <<TotalWorkweeks>> weeks.

During the period of September 23, 2022 through \_\_\_\_\_, you were employed XX pay periods.

It is estimated that your Individual Settlement Payment will be \$<<TotalEstAmount>> and your Individual PAGA Payment will be \$ \_\_\_\_\_. The actual amount you receive may be more or less than the estimated amount.

## HOW TO GET A PAYMENT

### 7. How Can I Get My Settlement Payment?

If you do nothing, you will automatically receive your Settlement Payment after the Court grants final approval of the Settlement and judgment becomes final. You must, however, notify the Settlement Administrator of any change in your name, mailing address and/or telephone number if the information shown on this Notice is not correct. **It is your responsibility to keep the Settlement Administrator informed of any change in your address. Your Settlement Payment will be mailed to the last known address the Settlement Administrator has on file for you.**

### 8. What If My Number Of Work Weeks Is Wrong?

The number of workweeks you worked during the Class Period and the number of PAGA pay periods you worked during the PAGA Period, as recorded in Nationwide's records, are stated in section 6. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 15 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. You should include a statement at the end of your letter that "I certify under penalty of perjury under the laws of the state of California that the information contained herein is true" and sign your letter. The Administrator will accept Nationwide's calculation of Workweeks and/or Pay Periods based on Nationwide's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Nationwide's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

### 9. When Can I Expect To Receive My Settlement Payment?

If you do not exclude yourself from the Settlement, your share of the Settlement will be mailed to you within approximately 30 days after final judgment has been entered in this Action and all rights of appeal have expired and/or been exhausted. Your share of the Settlement will be mailed to the address on file for you. If your address is different than the address to which this Notice was mailed, you should call the Settlement Administrator at [phone number]. Please do not telephone or contact the Court for information about this Settlement.

Settlement Payment checks must be cashed within 180 days from the date of mailing. The front of every check issued for Individual Settlement Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be sent to the California State Controller's Unclaimed Property Fund in your name and will be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, et seq. until such time that you claim your property or as otherwise required by law. If your check is lost or misplaced, you should immediately contact the Settlement Administrator to request a replacement.

### 10. What Am I Giving Up To Get A Settlement Payment?

If the Court approves the Settlement, the Court will enter judgment and the Settlement Agreement will bind all Class members who have not timely opted out of the Settlement, and will bar all such class members from bringing certain claims against Nationwide as follows:

**Participating Class Members' Release of Claims:** upon the Effective Date and Defendant's funding of the Gross Settlement Amount, all Class Members whom the Settlement Administrator certifies have not timely submitted full and complete requests for exclusion, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge Nationwide, and its respective former and present parents, subsidiaries, affiliated corporations and entities, successors, insurers, clients, and vendors and independent contractors through which Nationwide conducts business, and each of their respective current, former, and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any

successors, assigns, legal representatives, or any individual or entity which could be jointly liable with Nationwide and all persons or entities acting by, through, under, or in concert with any of them (“Released Parties”), from any and all claims, rights, demands, liabilities, and causes of action of any kind arising from the alleged violation of any provision of common law, California law and/or federal law that occurred during the Class Period that were pled in either Action, or Plaintiff’s LWDA letter, or which could have been pled based on the facts alleged and theories asserted in either Action, including claims for: failure to timely pay all wages (California Labor Code §§ 201, 202, 203, 204, 210, 558); failure to pay all minimum, overtime and reporting time wages, including with respect to the rate at which such wages are paid (California Labor Code §§ 204, 222, 218, 218.5, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, and applicable sections of the relevant Order of the Industrial Welfare Commission); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide sick pay or properly pay sick time, including with respect to the rate at which it was paid (California Labor Code §§ 233, 246, 248, 248.5); failure to produce requested records (Cal. Lab. Code §§ 226, 1198.5); failure to provide information upon hiring (Cal. Lab. Code § 2810.5); failure to pay vested vacation time at termination, including with respect to the rate at which it was paid (California Labor Code §§ 227.3, 558); failure to reimburse all necessary business expenses, including but not limited to expenses related to cell phones, internet, home office expenses/supplies, job-related training courses, transportation, mileage, lodging, uniforms, and more (California Labor Code §§ 2802, 2804); unlawful deductions (California Labor Code § 221); violation of the IWC California Wage Orders; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3, 558); failure to maintain records (California Labor Code § 226, 1174, 1174.5); unfair competition in violation of California Business and Professions Code section 17200 et seq.; violation of the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.); violation of the California Investigative Consumer Reporting Agencies Act (California Civil Code § 1786 et seq.); and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys’ fees as a result thereof, and that arose during the Class Period (“Released Claims”).

**PAGA Group Members’ PAGA Release:** Upon the Effective Date, in consideration of the PAGA Penalty Payment, Plaintiff, on behalf of herself and the State of California, and all PAGA Group Members, waives, fully releases and forever discharges the Released Parties from any and all claims under PAGA arising from and/or relating in any way to the claims pled in the Actions, or Plaintiff’s LWDA letter, or that could have been asserted based on the facts alleged or theories asserted in the Actions against Nationwide, including, but not limited to, claims for: failure to timely pay all wages (California Labor Code §§ 201, 202, 203, 204, 210, 558); failure to pay all minimum, overtime and reporting time wages, including with respect to the rate at which such wages are paid (California Labor Code §§ 204, 218, 218.5, 222, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198 and applicable sections of the relevant Order of the Industrial Welfare Commission); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide sick pay or properly pay sick time, including with respect to the rate at which it was paid (California Labor Code §§ 233, 246, 248, 248.5); failure to produce requested records (Cal. Lab. Code §§ 226, 1198.5); failure to provide information upon hiring (Cal. Lab. Code § 2810.5); failure to pay vested vacation time at termination, including with respect to the rate at which it was paid (Cal. Lab. Code §§ 227.3, 558); failure to reimburse all necessary business expenses, including but not limited to expenses related to cell phones, internet, home office expenses/supplies, job-related training courses, transportation, mileage, lodging, uniforms, and more (California Labor Code §§ 2802, 2804); unlawful deductions (California Labor Code § 221); violation of the IWC California Wage Orders; failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3, 558); failure to maintain records (Cal. Lab. Code § 226, 1174, 1174.5); and that arose on or before [REDACTED].

# **11. What Happens If The Court Doesn’t Grant Final Approval To The Settlement?**

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the conditional settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this Settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 12. How Do I Get Out Of The Settlement?

If you do not want to participate in the class Settlement, you should exclude yourself from this case (that is, “opt out” of the Settlement). To opt out and exclude yourself from the class case, you must provide a signed and dated letter to the Settlement Administrator requesting to be excluded. The letter must state in substance that you request exclusion from the class and do not wish to participate in the class settlement.

The opt out request letter must include the name of this action (*Ana Lemus v. Nationwide Mutual Insurance Co.*, Sacramento Superior Court Case No. 23CV012222), your full name, current address, and last four digits of your social security number, signed by you, and must be postmarked and mailed to the Settlement Administrator at the address listed in section 15 on or before [RESPONSE DEADLINE]. You may also return it by faxing to [FAX NUMBER]. Opt out requests postmarked after this date may be disregarded.

As stated above, a Class Member’s right to opt out applies only to the class action portion of the Settlement and no opt out right applies to the settlement of PAGA claims in the Lawsuit. This means that Class Members who successfully submit a request for exclusion will not be entitled to a settlement payment for the class portion of this Settlement, and will not be bound by the class action release of this Agreement. However, Class Members who submit a valid opt out request will nevertheless be bound by the settlement and release of PAGA claims in the Settlement to the extent they are a member of the PAGA Group and will receive a payment for their individual share of the PAGA Group Payment in settlement of PAGA claims.

## OBJECTING TO THE SETTLEMENT

### 13. Procedures for Objecting to the Settlement and/or Notices of Intention to Appear

Only Participating Class Members have the right to object to the Settlement. If you do not opt out but believe that the Court should not approve the settlement for any reason, you may object to the proposed settlement. To object, you must submit a written statement with your full name, current address, phone number, and the last four digits of your Social Security member. The written statement should include the name of this action (*Ana Lemus v. Nationwide Mutual Insurance Co.*, Sacramento Superior Court Case No. 23CV012222), a statement that you wish to object to the settlement, and the reasons that you object to the settlement. You must sign the statement.

You may also appear at the Final Approval Hearing at your expense, either in person, remotely, or through an attorney, provided you notify the Court of your intention to do so. If you desire to appear remotely, you can join via the Court’s zoom link using the access information listed in section 14 below. You do not have to be represented by a lawyer to object. However, if you choose to retain a lawyer to represent you, you will be solely responsible for any attorneys’ fees and costs incurred.

All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*Ana Lemus v. Nationwide Mutual Insurance Co.*, Sacramento Superior Court Case No. 23CV012222), (b) be mailed or faxed to the settlement administrator at the address/fax number listed in section 15 of this Notice; and (c) be postmarked or faxed on or before [REDACTED], 20\*\*.”

Though it is preferred that Class Members submit Objections by the Response Deadline, no objecting Class Member shall be denied the ability to object at the Final Settlement Approval Hearing (whether personally or through separate counsel).

## THE COURT’S FINAL APPROVAL HEARING

### 14. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Final Approval hearing in Department 22 of the Court located at [address] Sacramento, California 95814 on [DATE], at [TIME]. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel’s request for attorneys’ fees and litigation costs, the Class Representative service payments, and the Settlement Administrator’s fees and expenses.

You can, but don’t have to, attend the Final Approval Hearing. You can attend (or hire a lawyer to attend) either personally or by telephone or video via the access information listed below so long as you file a Notice of Intent to Appear with the Court in advance of the Final Approval Hearing. Check the Court’s website for the most current information.

To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>  
To join by phone: (833) 568-8864/ID: 16184738886

The Court may reschedule the Final Approval Hearing without further notice to Class Members. You should check the Administrator’s website \_\_\_\_\_ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

If the Court grants final approval of the Settlement, a copy of the Final Approval Order and Judgment will be posted on the Settlement Administrator’s website for you to review at \_\_\_\_\_ [url address], where you will find a link to the document.

GETTING MORE INFORMATION

15. Whom May I Contact If I Have Questions About The Settlement?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is available online at \_\_\_\_\_. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Sacramento’s Website at [www.saccourt.ca.gov](http://www.saccourt.ca.gov), or (b) in person at Civil Records Unit, Gordon D. Schaber Sacramento County Courthouse, Room 102 (Window 16), 720 9<sup>th</sup> Street, Sacramento, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel (at the contact information provided below) or the Settlement Administrator.

The Settlement Agreement sets forth everything Nationwide and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement or any other Settlement-related documents is to go to the Settlement Administrator’s website at \_\_\_\_\_, where you will find links to these documents.

| Class Counsel Contact Information:                                                                                                                          | Settlement Administrator Contact Information |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| D.LAW, INC.<br>David Yeremian<br>Alvin B. Lindsay<br>450 N Brand Blvd., Suite 840<br>Glendale, CA 91203<br>Telephone: (818) 962-6465<br>Fax: (818) 962-6469 | TBD                                          |

DO NOT TELEPHONE THE SUPERIOR COURT OR DEFENDANT’S COUNSEL TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

# EXHIBIT 2

**DAVID YEREMIAN  
& ASSOCIATES INC**

2540 Foothill Blvd., Suite 201  
La Crescenta, California 91214

818 230 8380  
818 230 0308 FAX

DAVID@YEREMIANLAW.COM; ALVIN@YEREMIANLAW.COM

July 17, 2023

**VIA ON-LINE SUBMISSION ONLY TO:**

<https://dir.tfaforms.net/128>

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

**VIA CERTIFIED MAIL TO:**

(by certified mail as follows)

Nationwide Mutual Insurance Company  
One West Nationwide Blvd.  
Columbus, OH 43215  
Certified Mail Tracking Number: 7019 2970 0000 5059 5670

CSC - Lawyers Incorporating Service, Agent for Service  
Nationwide Mutual Insurance Company  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833  
Certified Mail Tracking Number: 7019 2970 0000 5059 5656

**Re: Labor Code § 2698, *et seq.* Penalties  
PAGA Notice Letter to LWDA  
*Ana L. Lemus v Nationwide Mutual Insurance Company, et al.*  
Superior Court for the County of Sacramento**

Gentlepersons:

This office represents Plaintiff Ana L. Lemus (“Plaintiff”) and other similarly aggrieved employees employed as hourly, non-exempt employees by Defendants in California, including as insurance claims adjusters and in related positions pertaining to providing property and casualty insurance services, during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 212, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802, 2698, and 2699, *et seq.*; 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 Nationwide Mutual Insurance Company 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 Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in Sacramento County 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 representative 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**

Plaintiff and the Aggrieved Employees (“Aggrieved Employees”) worked as hourly, non-exempt Employees for Defendants, including as insurance claims adjusters and in related positions pertaining to providing property and casualty insurance services. Plaintiff, and upon information and belief other similarly situated Employees, were required to perform work tasks based out of Defendants’ California locations and facilities, including as field adjusters and in remote working locations at homes and offices throughout California. Plaintiff has resided in Fresno, California and was generally employed by Defendants throughout her employment at home and field locations in surrounding areas, including in Sacramento, Tulare, Madera, and Fresno Counties.

She and the other similarly Aggrieved Employees worked at Defendants’ behest without being paid all wages due and without being provided all required breaks. More specifically, Plaintiff and the other Aggrieved Employees were employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same policies and practices (3) and endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions.

Defendants required Plaintiff and the Aggrieved Employees to work off the clock and failed to record accurate time worked by these Employees, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and provided Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendants’ control and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

Defendant Nationwide Mutual Insurance Company (“Nationwide”) is an Ohio corporation with its offices and headquarters located in Columbus, Ohio, and it does not list a principal California address with the Secretary of State. It maintains offices in Sacramento, California and throughout California, from where it conducts operations and trainings and orientations and the like. Nationwide Mutual Insurance Co. is listed as the employer on the wage statements issued to Plaintiff, and upon information and belief the other Aggrieved Employees. Nationwide explains that “Nationwide Mutual Insurance Company and affiliated companies is a group of large U.S. insurance and financial services companies based in Columbus, OH.” It operates nationally through regional headquarters which support Employees employed throughout the United States, including in California and in Sacramento County.

During the course of Plaintiff and the Aggrieved Employees’ employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in “off the clock” work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as claims adjusters and in similar and related positions remotely and based out of their locations and offices throughout California.

Plaintiff was generally scheduled to work five to six days per week and from eight to twelve hours per shift. Her shifts were generally scheduled from 8:00 a.m. through 4:30 p.m. for 8 hour shifts with an automatic 30 minute meal period deduction. However, many of her shifts encompassed up to ten or twelve or more hours extending well into the evening. As an insurance claims adjuster, Plaintiff would evaluate and assess and estimate damages using company software and systems, negotiate with vendors, research coverage issues and logistics, and provide customer service to Defendants’ customers. Upon information and belief, the other Aggrieved Employees were also required to work similar schedules and performed tasks similar to Plaintiff at Defendants’ behest and in accordance with Defendants’ policies and practices.

Plaintiff was required to endure off the clock work by performing work related duties to prepare for her shift, including checking her equipment and connections so she could be ready to perform her job duties at the start of her scheduled shift and before clocking in. Plaintiff was required to begin work sufficiently before her scheduled shift start time so that she could wait for her computer to boot up and log into it and Defendants’ system and open the timekeeping program and record a shift start time entry. Off the clock work also occurred on occasion at the end of work shifts when Plaintiff worked to complete her many daily job duties and reporting requirements after she was clocked out. Plaintiff and the Aggrieved Employees were also required to incur further off the clock work during shortened breaks and on all the occasions when their breaks were interrupted or otherwise shortened so that they could perform work tasks and confer with managers as necessary. To avoid scrutiny from managers and the warnings in the timekeeping system, and due to chronic understaffing and exacting work and production expectations placed upon them by Defendants’ management, Plaintiff and upon information and belief the other

Aggrieved Employees would continue working at their work stations or otherwise on their phones during meals and after and before work shifts.

Defendants generally required work schedules that necessitated overtime and double time, and on the occasions when Plaintiff and upon information and belief the other Aggrieved Employees did work overtime hours, Defendants' unlawful timekeeping practices regarding off the clock work also resulted in failure to pay Plaintiff and the Aggrieved Employees for overtime hours worked and to pay it at the correct overtime premium rate. With the hours worked off the clock before shifts commenced, and when Plaintiff and the Aggrieved Employees worked past eight hours on their shifts, they were not paid all overtime premium wages for these hours worked over eight in a work shift and forty in a work week. Defendants also failed to pay wages for all hours worked by issuing Employees gift cards to various stores for various purposes and amounts. This is unlawful under Labor Code § 212. On other occasions, Plaintiff's wage statements and time records establish she worked more regular and overtime hours than Defendants credited her for working. This resulted in further ongoing wage payment violations through unlawful rounding and time shaving and other timekeeping entry manipulations that underpaid or failed to pay Aggrieved Employees for all their hours worked.

By the off the clock work addressed above, the Aggrieved Employees began incurring overtime hours before the alleged eight hour mark when Defendants began paying any overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct overtime rate of pay. Defendants also paid other forms of remuneration to Plaintiff and the Aggrieved Employees comprising performance completion credits and performance incentives and other types of bonuses as additional forms of remuneration above and beyond the regular hourly pay, including Associate Incentive Plan payments, My Health Completion Credits, and performance based gift cards or Ecards. Defendants were required to include all forms of remuneration in the regular rate used to calculate and pay overtime. However, Plaintiff's wage statements evidence that Plaintiff worked and was paid for overtime hours and double-time hours at a premium rate of 1.5 times or 2 times Plaintiff's regular hourly rate. By failing to include all forms of remuneration Defendants paid to Plaintiff in the regular rate used to calculate and pay overtime and double time hours, Defendants committed ongoing and systematic wage violations. Additionally, to the extent Defendants paid any meal period premium payments (i.e. one-hour of pay to the Aggrieved Employees at their regular rate of compensation), Defendants must also include all forms of remuneration in the regular rate of compensation used to calculate and pay these meal period premium payments. The same applies for vacation and paid time off and sick days and the like, and upon information and belief, Defendants failed to do so.

Plaintiff was therefore not paid for all her hours worked at the required minimum, overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy and practice of requiring her to work off the clock and without pay. Defendants systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day at the required double time rate. Upon

information and belief, the Aggrieved Employees were bound by similar scheduling and timekeeping policies and endured similar violations at Defendants' hands as Plaintiff.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants required and the actual hours Plaintiff worked or the breaks she received or have otherwise declined to produce them to Plaintiff in response to a timely and lawful records request. By failing to pay for all hours worked, and by under-recording regular hours to the detriment of the Aggrieved Employees, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174, by either failing to maintain records or retaining inaccurate ones.

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the Aggrieved Employees working remotely and/or based out of Defendants' locations and facilities throughout California. As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week.

As a result of Defendants' unlawful policies and practices, Plaintiff and Aggrieved Employees incurred overtime hours worked for which they were not adequately and completely compensated, in addition to the hours they were required to work off the clock at their regular rates. Additionally, by miscalculating the regular rate of pay used for the overtime rate calculation, Defendants systematically underpaid wages to the Aggrieved Employees. This further resulted in systematic violations of Labor Code § 204 for failure to pay all wages owed twice monthly and for failing to provide wage statements as required under Labor Code § 226.

Therefore, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wages for all time worked, as required by California law. Also, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

Defendants also failed to provide Plaintiff and the Aggrieved Employees with their required meal periods and the at least two ten-minute rest breaks as required at a minimum for Plaintiff's scheduled shift durations. The above described off the clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to authorize and

permit Plaintiff and the Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

More specifically, Defendants required Plaintiff to work shifts ranging from eight to twelve hours and beyond without providing her an off-duty meal period of thirty minutes for every five hours worked. Therefore, on shifts of over ten hours, Defendants were required to provide Plaintiff with two thirty minute meal periods and failed to do so. Defendants either do not maintain any meal period waivers from Plaintiff or have not produced them to Plaintiff in response to her records requests.

Additionally, on many shifts of over five or six hours, Plaintiff was either not provided with a meal period or the one provided was untimely or for less than thirty minutes. Plaintiff's timekeeping records will evidence late meal periods or no meal periods, and meal periods provided for less than thirty minutes. Plaintiff and the Aggrieved Employees were also required to keep their personal cellular phones with them during their work shifts and during any meal period they were able to take so that they could respond to work demands and communicate with managers and customers regarding her various assigned claims. No wage statements or other records Defendants have made available evidence of Defendants' payment of any meal period premiums for meal period violations. However, to the extent Defendants ever paid them, they did so at an improper regular and resulting overtime rate by failing to include all forms of remuneration, as addressed above.

Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. They were required to perform work as ordered by Defendants for more than five hours during a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that would impact when Employees were to receive meal periods and rest breaks, thus leading to further violations.

Defendants' systems did not automatically generate a meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours into a work shift or in the event the time punch records reflected a meal period of less than 30 minutes. However, upon information and belief, in the event Defendants did pay any meal period premiums, they did so at the employee's customary regular rate of hourly compensation without including all forms of remuneration in that hourly rate calculation, for example by omitting bonuses and the like from the rate at which meal premiums were paid.

Labor Code § 226.7 requires that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." The same requirement is found in Paragraph 11 of the applicable IWC Wage Orders. Defendants failed to include bonuses and all forms of remuneration in the calculation of the regular rate of compensation which Section 226.7 requires, or did so inaccurately and incorrectly.

Just as in the instances when Defendants miscalculated the regular rate used to calculate and pay overtime wages as addressed above, to the extent Defendants paid any Section 226.7 payments, they did so at the regular hourly rate without incorporating any additional remuneration into the calculation. Defendants must be required pay to Aggrieved Employees the amount of their underpaid Section 226.7 payments.

While Defendants may attempt to assert Aggrieved Employees provided meal period waivers waiving any meal periods on shifts of less than six hours or waiving second meal periods on shifts over ten hours, upon information and belief such waivers were not agreed to by the Aggrieved Employees or are otherwise unenforceable. Also, when Aggrieved Employees worked shifts of over ten hours, Defendants often neglected to provide them with the opportunity to take second meal periods. Defendants therefore are not only liable for failing to provide meal periods to Aggrieved Employees, but also for failing to compensate Aggrieved Employees with one hour of pay at their regular rate of compensation for every unprovided or unlawfully provided meal period.

Defendants thus followed uniformly applied policies of not providing all required meal periods to their Employees. Meal periods were often not properly provided, as work demands and travel time and computer time impermissibly shortened their breaks. Even when Aggrieved Employees were able to take a meal period, it was often provided for less than the required 30 minutes or was otherwise interrupted by work duties or was taken after the fifth hour of work. Again, Plaintiff was required to wait at her work station performing job duties in the event she attempted to clock in before 30 minutes until the scheduled meal period end time, resulting in off the clock work and systematically shortened meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that would impact when Employees were to receive meal periods and rest breaks, thus leading to further violations.

As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective regular hourly rate of compensation for each meal period or rest break that Defendants failed to provide or deficiently provided.

Similar violations resulted from Defendants' failure to authorize and permit Aggrieved Employees to take duty-free, net ten minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Aggrieved Employees were either not authorized permitted the opportunity to take a rest break, or were required to remain under Defendants' control and respond to calls and instructions from management and job and customer demands while attempting to take one. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks, evidencing Defendants' policy and practice of requiring Aggrieved Employees to remain under their control during required off-duty rest break times.

Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. Aggrieved Employees worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. Even on the occasions when Defendants authorized and permitted Plaintiff to take a first rest break, she was not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirement.

Aggrieved Employees were therefore not authorized and permitted to take lawful rest periods, and the ones Defendants attempted to authorize and permit were generally either untimely or shortened and on-duty. Defendants thus required Aggrieved Employees to work or otherwise remain under Defendants' control through or during breaks. Upon information and belief, they were also not provided with one hour of regular rate compensation for any unprovided or unlawfully provided rest breaks, but to the extent they ever were, Defendants miscalculated the regular rate of compensation and underpaid the premiums as with meal periods.

Defendants also had a common policy and/or practice of unlawfully collecting or deducting wages from Aggrieved Employees. Defendants have thus consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock work and work during breaks. Defendants also miscalculated overtime premium payments for certain hours worked over eight in a shift or over forty in a week. Defendants also violated the Labor Code and Wage Orders by failing pay all wages owed due in part to unlawful deduction from wages owed. By not compensating Employees for all hours worked and failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

Defendants have also consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime and double time or to pay it at the correctly calculated rate, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Aggrieved Employees, during the liability period, because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders.

Moreover, Defendants violated Section 226 by failing to provide the Aggrieved Employees with any wage statements with their semi-monthly wage payments. If and when Defendants provided statements, they failed to accurately list the applicable overtime rate required or the actual total hours worked, and therefore systematically underpaid wages leading to inaccurate wage statements. Defendants failed to accurately record and pay for all regular and overtime and double time hours worked by Aggrieved Employees, and unlawfully miscalculated and underpaid overtime and any meal period premiums they paid, which all resulted in inaccurate wage statements.

Defendants have thus failed to provide Aggrieved Employees with wage statements that accurately reported all hours worked and applicable hourly rates for all hours worked. Plaintiff and the Aggrieved Employees were unable to discern from their wage statements alone the actual hours they worked in total during a pay period. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing wage statements that inaccurately reported total hours worked and total wages earned by Aggrieved Employees, along with the appropriate applicable rates, among other requirements. 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.

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 and double time premium wages owed for work conducted on a work shift and a workday, or to pay them at the correct rate, as addressed above. In addition to not paying for all hours worked off the clock and for all meal and rest period premiums owed during a pay period, Defendants failed to pay overtime at the required premium rate by not including all forms of compensation received in the calculation of the regular rate used to calculate and pay overtime premium wages, which further directly violates Labor Code § 204 for failure to pay all wages owed twice monthly. This is also exemplary of Defendants' failure to provide accurate itemized wage statements listing these hours worked and applicable rates under Labor Code § 226(a) and under the corresponding requirements in the Wage Order.

Defendants required Plaintiff and the Aggrieved Employees to work hours off the clock for which they were not compensated. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a work-day, or paid them and meal period premium payments at incorrectly calculated rates, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Aggrieved Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws. Labor Code §§ 201-203. Also, while Defendants paid Plaintiff eventually following her termination, it wasn't for at least two days and was untimely under the statutes. In view of the above addressed violations, Defendants have also failed to pay all wages owed to Plaintiff and the Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

Defendants also failed to provide Employees such as Plaintiff at the time of her employment and thereafter with written notice complying with all the requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing" specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5.

Defendants were required to provide Plaintiff and the Aggrieved Employees certain specific information upon hiring pursuant to California Labor Code § 2810.5. Defendants failed to provide Plaintiff with any such information when she was hired, and upon information and belief Defendants committed similar violations in connection with similarly situated and Aggrieved Employees.

Defendants also maintained policies that provide for the unlawful forfeiture of vested vacation and paid time off pay in violation of Labor Code § 227.3. Under California law, vacation wages are considered a form of wages. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law. Aggrieved Employees are entitled to vacation accrued during their employment with Defendants, and upon information and belief, upon termination, Plaintiffs and the Aggrieved Employees were not paid out all accrued vacation pay.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the aggrieved employees. Labor Code § 246 provides that an Employee who “works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Additionally and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.”

Defendants have also regularly required Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. Defendants required Aggrieved Employees to work remotely at times during the relevant period, but did not reimburse them for their use their computers and their internet time. Aggrieved Employees were also compelled to use cellular phones to conduct work related business, and to purchase office supplies and equipment, again without reimbursement. Aggrieved Employees must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

**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. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants’ control and due to the work demands placed upon them by Defendants’ management and during breaks. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements

on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

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 Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates, or of miscalculating them by not including all forms of remuneration in the regular rate of compensation. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits.

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, 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. Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

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 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 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).

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**Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221**

Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, Defendants unlawfully received and/or collected wages from the Aggrieved Employees by implementing a policy understating the hours worked and by requiring off the clock work and miscalculation of the regular rate for overtime and meal and rest premium payments, as alleged above. Aggrieved Employees had their wages unlawfully deducted when Defendants recorded fewer hours worked in the timekeeping records than were in fact worked. By not compensating Employees for all hours worked and failure to pay for hours spent under Defendants’ control, or by miscalculating the pay rate, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

**Failure to Issue Accurate 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 accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Any wage statements given to Employees by Defendants necessarily failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked or at the correct rate of pay and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

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, or miscalculated these premiums by not including all forms of remuneration in the regular rate, 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.

Given the above described off the clock work and deductions from hours worked perpetrated by Defendants' management, 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 forgoing, 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., 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).

**Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave**

Defendants violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Defendants have also failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief available for Defendants' failure to provide Aggrieved Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

**Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802**

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work related expenses they incurred, including for computer and internet use and personal cellular phone costs, along with office supplies and equipment as detailed above. Defendants thus 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).

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**Failure to Provide Information Upon Hiring Pursuant to Labor Code § 2810.5:**

Labor Code § 2810.5 provides that: “At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing” specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2810.5, 1198, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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

Defendants’ conduct has been and continues to be unfair, unlawful, and harmful to 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, 201.3, 202, 203, 204, 212, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 et seq., 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) Unlawful Deductions: For Defendants' unlawful deductions from wages under Labor Code §§ 221, 1197, 1197.1, 1198, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 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) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §§ 212, 227.3, and any above addressed violation of the applicable provisions of the Labor Code and 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).

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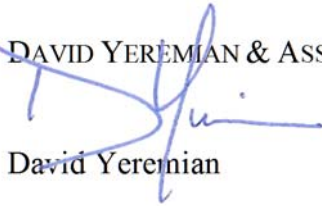
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case 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 Nationwide Mutual Insurance Company 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: Nationwide Mutual Insurance Company by Certified Mail

# EXHIBIT 3

# EXHIBIT 4

|                                                                                                   |
|---------------------------------------------------------------------------------------------------|
| <b>Lemus v. Nationwide Mutual Insurance Company (Class &amp; PAGA)</b><br><b>Litigation Costs</b> |
|---------------------------------------------------------------------------------------------------|

| Service Date |  | Details                                                                                          |  | Provider                  |  | Amount       |
|--------------|--|--------------------------------------------------------------------------------------------------|--|---------------------------|--|--------------|
| 7/17/23      |  | LWDA Letter                                                                                      |  | LWDA                      |  | \$ 75.00     |
| 7/17/23      |  | Summons and Complaint                                                                            |  | Rapid Legal               |  | \$ 1,622.77  |
| 8/1/23       |  | Process of Service - Summons & Complaint - Nationwide Mutual Insurance Company, Rebecca Vang ASP |  | Rapid Legal               |  | \$ 82.92     |
| 8/2/23       |  | Process of Service - Summons & Complaint - Nationwide Mutual Insurance Company, Koy Saechao ASP  |  | Rapid Legal               |  | \$ 83.95     |
| 8/4/23       |  | POS of Summons - Nationwide Mutual Insurance Company, Rebecca Vang ASP                           |  | Rapid Legal               |  | \$ 72.10     |
| 8/7/23       |  | POS of Summons - Nationwide Mutual Insurance Company, Koy Saechao ASP                            |  | Rapid Legal               |  | \$ 72.10     |
| 9/13/23      |  | Notice of Association                                                                            |  | Rapid Legal               |  | \$ 87.55     |
| 11/27/23     |  | Summons and Complaint (PAGA)                                                                     |  | Rapid Legal               |  | \$ 623.15    |
| 2/6/24       |  | STATE Notice of Department Relocation                                                            |  | Rapid Legal               |  | \$ 14.37     |
| 10/10/24     |  | Notice of Change of Address (PAGA)                                                               |  | Rapid Legal               |  | \$ 14.94     |
| 10/18/24     |  | Mediation (1.15.25)                                                                              |  | ORTMAN MEDIATION, INC.    |  | \$ 13,000.00 |
| 11/13/24     |  | Notice of Disassociation and Association                                                         |  | Rapid Legal               |  | \$ 14.94     |
| 11/13/24     |  | Notice of Association (PAGA)                                                                     |  | Rapid Legal               |  | \$ 14.94     |
| 2/21/25      |  | Notice of Disassociation of Attorney (PAGA)                                                      |  | Rapid Legal               |  | \$ 14.94     |
| 3/11/25      |  | Expert Fee                                                                                       |  | Berger's Consulting Group |  | \$ 16,920.00 |
| 4/7/25       |  | Stipulation & Order (PAGA)                                                                       |  | Rapid Legal               |  | \$ 35.54     |
| 4/15/25      |  | Amended Complaint & Notice of Association (PAGA)                                                 |  | Rapid Legal               |  | \$ 14.94     |
| 5/1/25       |  | Motion for Preliminary Approval                                                                  |  | Rapid Legal               |  | \$ 80.00     |
| FUTURE       |  | Motion for Final Approval                                                                        |  | Rapid Legal               |  | \$ 80.00     |
| FUTURE       |  | Request for Dismissal of Class Claims                                                            |  | Rapid Legal               |  | \$ 15.00     |

|              |                     |
|--------------|---------------------|
| <b>Total</b> | <b>\$ 32,939.15</b> |
|--------------|---------------------|