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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

VICENTE ALVAREZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SPENUZZA, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CVRI2304283
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: September 23, 2024

Time: 8:30 a.m.

Dept.: 1

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

9 2. I have been a member, in good standing, of the State Bar of California since 2001.
10 I am admitted to practice in the United States District Courts for the Central and Southern
11 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
12 courts in California.

13 3. I have handled over 500 employee vs. employer litigation matters during my 22
14 years in practice. Over the last 15 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled over 250 class action and representative
17 action wage/hour cases, and have been appointed by the court as class counsel and have received
18 final court approval and judgment in close to half of those actions to date, and anticipate
19 receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). At one point, my team and I held the record for the largest known
24 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
25 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
26 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

27 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
28 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior

1 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
2 against Walmart that was tried to the jury in District Court for the Central District, wherein the
3 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
4 were appealed.

5 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
6 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
7 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
8 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
9 only 5% of lawyers receive.

10 **BRIEF SUMMARY OF THE SETTLEMENT**

11 7. Following mediation, Plaintiff and Defendant (collectively, the “Parties”)
12 eventually entered into a Class and PAGA Settlement Agreement and Release of Claims
13 resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”),
14 which is attached hereto as **Exhibit A**.

15 8. The Settlement Agreement seeks to release and discharge Defendant from the
16 claims brought against it in exchange for Defendant’s agreement to pay \$720,000 on a non-
17 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
18 Settlement Amount without having to submit a claim form or take any action, except for those
19 who opt-out).

20 9. Plaintiff seeks to represent a class of all current and former nonexempt (hourly
21 paid) employees employed by Defendant in California during the Class Period (which is
22 February 15, 2020, through August 10, 2024).

23 10. Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff
24 Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the
25 Settlement Amount, litigation expenses not to exceed \$25,000, Settlement Administrator Costs
26 of \$7,000, PAGA penalties of \$40,000 (with 75% to the LWDA and 25% to the Aggrieved
27 Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff. After subtracting
28 these deductions from the Settlement Amount, approximately \$398,000.00 will be available to

1 pay individual settlement amounts to approximately 220 Class Members who do not opt-out of
2 the settlement, as follows:

<i>Settlement Amount</i>	\$ 720,000.00
Attorneys' Fees (1/3)	\$ 240,000.00
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 7,000.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 398,000.00

8 11. Assuming 220 total Class Members, the average payment will be approximately
9 \$1,809.09 (\$398,000 / 220). However, the actual payments will be calculated on a pro-rata basis
10 according to the number of Weeks Worked by each Class Member during the Class Period. And
11 each Class Member will receive the Class Notice, explaining the nature of the case, and the
12 process for participating, objecting and opting-out, and advising of his/her estimated settlement
13 payment and the number of Work Weeks he/she is credited with working during the applicable
14 periods. True and correct copies of the Class Notice, Request for Exclusion Form, Objection
15 Form and Dispute Form are attached hereto as **Exhibits B, C, D and E**, respectively.

PROCEDURAL BACKGROUND

17 12. My office has performed considerable work and diligently investigated and
18 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
19 significant settlement fund for the benefit of the Class. We efficiently communicated and
20 exchanged information informally with Defense counsel which enabled the parties to
21 successfully settle the case. Because of the risks involved in litigating the case and the contested
22 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

23 13. After being retained by Plaintiff, we submitted a letter to the Labor and
24 Workforce Development Agency ("LWDA") for civil penalties under the Private Attorneys
25 General Act of 2004 ("PAGA"), and simultaneously sent a letter to Defendant requesting the
26 production of personnel and timekeeping records to further evaluate his wage and hour claims.
27 The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the
28 right to bring PAGA claims. A true and correct copy of Mr. Alvarez's LWDA Notice Letter is

1 attached hereto as **Exhibit F**.

2 14. On August 9, 2023, my office filed this class action, alleging that Defendant
3 violated various sections of the Labor Code. Then, on November 9, 2023, my office filed a First
4 Amended Complaint adding PAGA causes of action.

5 15. Defendant retained counsel and immediately began to defend the case. Then,
6 after early discussions among counsel, the Parties agreed to attend private mediation. In
7 preparation for mediation, the Parties informally exchanged documents and information that
8 allowed both sides to calculate the potential damages and evaluate potential risk, including
9 policies and procedures pertaining to the claims, statistics relating to the number of current and
10 former employees, number of shifts, pay periods worked and other things, and a sampling of
11 payroll and timekeeping records for Class Members. This information enabled both parties to
12 take a deep dive into the claims. Additionally, during this process, Plaintiff and his counsel
13 analyzed, researched, and investigated the potential issues, including matters related to the
14 calculation of damages, trial, and appellate issues and risks.

15 16. On June 11, 2024, Plaintiff and Defendant participated in mediation before Steve
16 Serratore, Esq. a well-respected employment mediator. At the conclusion of mediation, and after
17 extensive arms-length negotiations, Mr. Serratore issued a mediator's proposal which was
18 ultimately accepted by the Parties. The Parties now seek the Court's preliminary approval of the
19 Settlement.

20 **SUMMARY OF THE CLAIMS AND DEFENSES**

21 17. Plaintiff alleged numerous wage and hour violations on behalf of the Class.
22 However, Defendant vigorously contested and denied each of Plaintiff's material allegations on
23 the merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff
24 believed there were several strong claims.

25 18. For instance, Plaintiff raised two strong unpaid wage claims. *First*, Plaintiff
26 alleged that he and the Class Members were paid on an hourly basis plus various forms of bonus
27 pay, yet those amounts were not included in the calculations for overtime and various other
28 payments. *Second*, Plaintiff alleged that he and the Class Members were frequently paid for less

1 time than reflected in their timekeeping. Plaintiff also argued that Plaintiff argued these
2 violations resulted in significant unpaid wages, waiting time penalties under Labor Code § 203
3 and other derivative penalties. However, Defendant opposed each unpaid wage claim on the
4 merits and as to the propriety of class certification.

5 19. Plaintiff also alleged that he and the Class Members were often denied compliant
6 meal and rest breaks due to the nature of the work. However, Defendant argued that it provided
7 and made all mandated meal and rest breaks available to the Class, and any employee who did
8 not take a break did so entirely of their own volition. Thus, Defendant argued that these claims
9 were without merit because, for each violation, a fact-finder would have to determine why a
10 break was noncompliant, because if it was by the employee's choice, no liability attaches to
11 Defendant.

12 20. Finally, Plaintiff alleged a variety of other claims (all of which Defendant
13 disputed), such as the failure to timely pay wages each period, failure to timely pay all wages
14 upon separation of employment, and failure to provide accurate itemized wage statements.

15 21. Despite the disputed nature of the claims, the Parties concluded that further
16 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
17 be fully and finally settled to limit further risk, expense, and protracted litigation.

18 **CMO COMPLIANCE**

19 22. In accordance with CMO ¶ G, this section will specifically identify and address
20 each CMO requirement. This information was compiled with the assistance of Peter Carlson,
21 who was responsible for preparing the pre-mediation data and calculations, and primarily
22 assisted in the preparation of the *Kullar* analysis. As such, the following is based largely on
23 information and belief, as it was largely prepared with Mr. Carlson's assistance (but I reviewed
24 all of the information).

25 **CMO ¶ G(3)(a)(i)**

26 23. Based on information obtained in discovery and through informal discovery
27 before mediation, I estimate that there will be approximately 220 individuals that fall within the
28 Class definition and 170 of those individuals are also PAGA "Aggrieved Employees."

CMO ¶ G(3)(a)(ii), CMO ¶ G(3)(a)(iii), CMO ¶ G(9)(b)

24. The following paragraphs provide the maximum and risk-adjusted value for each claim, and this includes all claims on a class and PAGA basis as required by the CMO.

25. The calculations below are based upon data points obtained through formal and informal discovery, from which Plaintiff's counsel estimated the following through mediation: (1) 220 Class Members, (2) 120 *former* Class Members for purposes of Labor Code § 203, (3) 23,276 workweeks, (4) 105,192 shifts worked, and (4) approximately 9,975 wage statements during the PAGA Period.

Unpaid Wage Claims

26. Plaintiff alleged two unpaid wage claims on behalf of the Class: (1) Defendant paid the Class on an hourly basis plus additional earned compensation but failed to include this compensation in the regular rate calculations and overtime pay, and (2) Defendant failed to pay for all compensable hours due to a discrepancy between timekeeping records and hours paid.

27. As to the first unpaid wage claim, Plaintiff and the Class Members were paid on an hourly basis along with nondiscretionary bonuses and other earned compensation. However, the pre-mediation sampling showed that, on the occasions that a Class Member earned additional compensation and worked overtime during the time period when such compensation was earned, Defendant did not include the compensation in the regular rate (*i.e.*, Defendant only paid overtime at 1.5 times the base rate). As to the second unpaid wage claim, Plaintiff argued that – as showing in the timekeeping – he and the Class Members were, at times, forced to perform uncompensated work because they were under Defendant's "control" at this time after clocking in, yet Defendant did not compensate until their scheduled start time.

28. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages for the unpaid wages (based on the regular rate claim) as \$50,000 based on analysis of the sampling. And we also calculated the maximum potential damages for the unpaid minimum and overtime wages (based on the time discrepancy claim) as \$690,000, and this figure was calculated based on an analysis of the sampling, specifically looking at the delta between the total number of hours in the timekeeping cross-checked against the total number of hours paid.

1 29. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of these unpaid wage
2 claims as \$300,000. As to the regular rate claims, Defendant argued that the bonus payments
3 were discretionary and did not trigger liability. However, due to the objective nature of the
4 regular rate violations, Plaintiff was confident that she would succeed on that specific claim, and
5 placed little risk at class certification or on the merits. Then Defendant vehemently opposed the
6 “off-the-clock” time discrepancy unpaid wage claims as to the propriety of class certification
7 (arguing that this would require the prototypical “individualized inquiries” requiring denial of
8 class certification). Additionally, on the merits, Defendant argued that the time discrepancy
9 arguments would fail because the difference between timekeeping and hours paid was readily
10 explainable; in short, Defendant argued that as a production facility, no employees could start
11 work until 6:00 a.m. (the shift start time) because none of the machines were in operation and
12 there were no tasks to perform. Thus, for anyone that clocked in prior to 6:00 a.m., Defendant
13 argued that it would succeed on defeating any unpaid wage claims because the employees were
14 not (and could not be) performing work for the company, and were also not under the company’s
15 direction or control.

16 30. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff
17 calculated the maximum potential PAGA penalty at trial as \$997,500 based on a 100% violation
18 rate for 9,975 wage statements issued during the period. We then applied a merits risk, similar to
19 the above, and further recognized that there were certain factors that reduce the possible value at
20 trial. Specifically, when considering the amount of discretionary reduction to apply against the
21 maximum penalties, we believe the Court would consider that: (a) if this claim succeeded, the
22 Class would already be receiving compensation for the same violations [and would thus apply a
23 smaller penalty because otherwise it is a double penalty], and (b) there were several “good faith”
24 defenses. As a result, we calculated a PAGA risk-adjusted value of \$50,000 for these unpaid
25 wage claims.

26 ***Meal and Rest Break Claims***

27 31. Plaintiff also alleged meal and rest break claims against Defendant, and this
28 section provides CMO-compliant information as to the value and basis for such claims.

1 32. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages as follows. For
2 the meal period claims, we calculated 71,846 violations (based on 68.3% violation rate) and
3 multiplied that by an average hourly rate of \$21 (the applicable premium rate under Labor Code
4 § 226.7) to arrive at maximum potential damages of \$1,508,769. For the rest break claims, we
5 calculated 52,596 violations (50% violation rate) and multiplied that by \$21 to arrive at
6 maximum potential damages of \$1,104,516.

7 33. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the meal period
8 claims as \$377,192 and for the rest break claim as \$276,129. These risk-adjusted figures are
9 based on the numerous defenses and risks attached to such claims. For instance, Defendant
10 raised numerous arguments in response to this claim, including that it maintained fully compliant
11 written policies and specifically authorized the Class Members to take meal and rest breaks,
12 meaning that no one had a reason or cause to miss a break or take a short/late break.
13 Additionally, Defendant argued and provided evidence that it “ceased operations” [as that phrase
14 is used in IWC Wage Order § 7(A)(3)] for all required meal and rest breaks and used a “bell
15 system” that informed the employees it was time to stop work. Moreover, as to the alleged “late
16 meal violations” (*i.e.*, after the 5th hour), Defendant noted that that it scheduled the workday to
17 begin at 6:00 a.m., with the meal period occurring at 10:55 a.m. – so there was no way for an
18 employee to take a “late” meal since it always occurred before the end of the fifth hour.
19 Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member
20 whether a break was missed and why, and why a break was noncompliant or nonexistent,
21 because if it was by the employee’s choice, no liability attaches to Defendant. These defenses are
22 factored into Plaintiff’s analysis in two ways. First, these issues raise questions regarding
23 whether the meal and rest break claims could be certified, and Plaintiff placed a 50% risk at the
24 class certification stage for meal periods and a 50% risk for rest breaks. Second, these defenses
25 also go toward the merits given the evidentiary question of proving the number of meal and rest
26 violations. As such, Plaintiff placed a 50% risk on the merits for meal breaks, and an additional
27 50% risk on the merits for rest breaks. This returns risk-adjusted values for meal periods of
28 \$377,192 [$\$1,508,769 \times 50\%$ class cert risk $\times 50\%$ merits risk] and for rest breaks of \$276,129

1 [\$1,104,516 x 50% cert risk x 50% merits risk].

2 34. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff
3 calculated the maximum potential PAGA penalty at trial as \$795,000 for meal periods (79.7%
4 pay period violation rate) and \$598,500 for rest breaks (60% pay period violation rate), based on
5 \$100 for each violation. But these claims faced the same merits and evidentiary risks discussed
6 above, so we applied a 50% risk on the merits for each claim. Then we also assumed that the
7 Court, when considering what discretionary reduction to apply, would give credit to Defendant's
8 attempt to enact and apply a compliant written meal and rest period policy. And, as a result, we
9 estimated that the Court would apply a discretionary reduction of 80%, leading to risk-adjusted
10 PAGA values of \$79,500 for meal periods and \$59,850 for rest breaks.

11 ***Wage Statement Claims***

12 35. Plaintiff alleged that, because of the unpaid wage and meal/rest violations above,
13 Defendant's wage statements failed to accurately reflect the gross and net wages payable.

14 36. CMO ¶ G(3)(a)(ii): based on the formula under Labor Code § 226(e) (\$50 for
15 initial violation and \$100 for subsequent violations), we calculated the maximum class wage
16 statement penalties as \$989,000 (170 "initial" violations at \$50 and 9,805 "subsequent"
17 violations at \$100 ([170 x \$50] + [9,805 x \$100] = \$989,000).

18 37. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the class wage
19 statement claims as \$296,700. This analysis incorporated Defendant's arguments and defenses
20 from above, and also accounted for the fact that these were "derivative" as opposed to "direct"
21 wage statement violations (*i.e.*, because these claims were entirely derivative of the claims
22 above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful).
23 Moreover, Defendant argued that "derivative" violations cannot trigger liability under § 226 and,
24 even if there was a "technical" violation, Plaintiff would be unable to prove the required
25 "knowing and intentional" and "injury" elements. Based on these facts and defenses, we placed
26 a 40% risk at class certification (in line with the claims on which the derivative wage statement
27 claim was based) and estimated another 50% risk on the merits, leading to a risk-adjusted value
28 for the derivative claims of \$296,700 [\$989,000 x 40% cert risk x 50% merits risk].

38. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff calculated the maximum potential PAGA penalty at trial as \$997,500 for wage statement claims based on a 100% violation rate for the 9,975 wage statements issued during the period multiplied by \$100. However, like above, the risk-adjusted value must consider the difference between the direct and derivative claims. Thus, we applied the same 50% merits risk and, even though there is no requirement for “knowing and intentional” under PAGA, we assumed that the Court would apply a discretionary reduction of 80% based on Defendant’s likely argument (if liability was found) that they were already liable for damages to the Class and for PAGA penalties for the overarching violations that triggered the derivative wage statement violations. Thus, the total risk-adjusted PAGA penalties for wage statement violations are \$99,750.

Waiting Time Penalty Claims

39. Plaintiff's claim for failure to timely pay final wages (and for waiting time penalties under Labor Code § 203) was entirely derivative of the claims above (*e.g.*, because Defendant failed to pay all wages and premiums owed, Defendant did not timely pay all final wages owed because there are still amounts due and payable).

40. CMO ¶ G(3)(a)(ii): we calculated the maximum potential value of this claim as \$657,720 based on 120 *former* employees who were paid \$182.70 per day (120 employees x \$182.70 daily pay x 30-day penalty = \$657,720).

41. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the waiting time penalty claim as \$197,316. The valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here, Defendant argued there was no “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. Additionally, argued that they had a “good faith” defense that prevents imposition of the waiting time penalties. As a result of this

analysis, Plaintiff's counsel applied a 40% risk at class certification and a 50% risk on the merits, setting a risk-adjusted value of \$197,316.

42. CMO ¶ G(9)(b): as for the PAGA penalty claims, Plaintiff calculated the maximum potential PAGA penalty at trial as \$8,000 based on 80 violations multiplied by \$100. But we had to incorporate the same risks as above (50% on the merits) and also assumed that, given Defendant's good faith attempts at compliance with California law, that the Court would also apply a 50% discretionary reduction in PAGA penalties, setting the risk-adjusted PAGA penalty value at \$2,000.

Failure to Timely Pay Wages Each Period

43. This claim is pursued on a PAGA basis (the remedy for a violation is enforceable either through PAGA or the Labor Commissioner); thus, the analysis here focuses on PAGA.

44. CMO ¶ G(9)(b): Plaintiff calculated the maximum potential PAGA penalty at trial as \$997,500 for Labor Code § 204 claims based on a 100% violation rate for the 9,975 wage statements issued during the period multiplied by \$100. This claim is based on the allegation that Defendant did not pay all wages and wage premiums (for meal/rest violations) timely each period, which violated Labor Code § 204. However, because these claims were entirely derivative of the claims above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful. And, as such, we had applied a 40% risk on the merits to align with the merits risk of the claims above. Additionally, we assumed that the Court would apply a discretionary reduction of 95% based on Defendant's likely argument (if liability was found) that PAGA penalties for § 204 violations should be greatly reduced because these are "derivative" and were already liable for damages to the Class and for PAGA penalties for the overarching violations. Thus, the risk-adjusted PAGA penalties under § 204 are \$29,925.

Collective Maximum and Risk-Adjusted Class Damages/Penalties and PAGA Penalties

CMO ¶¶ G(3)(a)(ii)(C), CMO G(3)(a)(iii)(C), and CMO ¶ G(9)(b)(iii and iv)

45. The table below provides the total sums (for all claims) of the maximum and risk-adjusted class damages and penalties and the total maximum and risk-adjusted PAGA penalties.

Claim	Class Values		PAGA Values	
	Maximum	Risk-Adjusted	Maximum	Risk-Adjusted
Unpaid Wages	\$740,000	\$250,000	\$997,500	\$50,000
Meal Periods	\$1,508,769	\$377,192	\$795,000	\$79,500
Rest Breaks	\$1,104,516	\$276,129	\$598,500	\$59,850
Wage Statement	\$989,000	\$296,700	\$997,500	\$99,750
Waiting Time Penalties	\$657,720	\$197,316	\$8,000	\$2,000
Labor Code § 204	n/a	n/a	\$997,500	\$29,925
Totals	\$5,000,005	\$1,447,337	\$4,394,000	\$321,025

CMO ¶ G(3)(a)(iv)

46. Based on an assumed Net Settlement Amount of \$398,000, and an estimated 220 Class Members, the average payment will be \$1,809.09. However, the actual amounts payable to the Class will be based on a guaranteed minimum payment plus an allocation based on each individual's weeks worked compared to the total Class weeks worked. While we cannot generate an exact "range of recoveries" right now since the Class Data will not be provided to the Settlement Administrator until after Preliminary Approval, I can provide reasonable estimates of the high and low payments as follows.

47. Based on our analysis, we estimate that there 220 Class Members participating in the Settlement, who will reach receive a share of the settlement based on weeks worked. Based on an estimate 24,000 workweeks during this period, we can assume an average per-workweek value of \$16.58 (\$398,000 / 24,000). Thus, on the low end, a Class Member that worked only 2 weeks during the Class Period will receive \$33.16 (\$16.58 x 2). And, at the high end, a Class Member that worked for the entire Class Period (234 calendar weeks) will receive an estimated high payment of \$3,879.72(\$16.58 x 234).

48. Given that these are only preliminary estimates, the Settlement Administrator will fill in the average, high, and low payments in the Class Notice (if necessary) after Preliminary Approval and after calculating those figures from the Class Data.

CMO ¶ G(3)(a)(v)

49. From the data and analysis conducted prior to mediation, derived through both formal and informal discovery, I estimate the following recoveries by the Aggrieved Employees.

1 First, given that we estimate 170 Aggrieved Employees, those individuals will receive an
2 estimated average share of \$58.82 (\$10,000 / 170). Then, based on an estimated 9,975 Work
3 Weeks during the PAGA Period, we estimate the value of each PAGA Workweek as \$1.00
4 (\$10,000 / 9,975); if an Aggrieved Employee worked only 2 weeks in the PAGA Period, the low
5 payment would be \$2 and, if an Aggrieved Employee worked the maximum weeks during the
6 PAGA Period (105), then the maximum PAGA payment will be \$105.

7 CMO ¶ G(3)(a)(vi)

8 50. My office conducted substantial informal discovery to investigate the size of the
9 class and strength of the claims. Specifically, in preparation for mediation, we demanded and
10 received informal discovery, including documents and information that allowed us calculate the
11 potential damages and evaluate potential risk, including policies and procedures pertaining to the
12 claims, statistics relating to the number of current and former employees, number of shifts, pay
13 periods worked and other things, and a sampling of payroll and time records for Class Members.

14 CMO ¶ G(3)(a)(vii)

15 51. I am not aware of any other class, representative, or collective action in this or
16 any other court that asserts claims similar to those asserted in this action or behalf of a class or
17 group of individuals, some or all of whom would also be members of this Class. I have also
18 made reasonable inquiry of other members of my firm and my co-counsel's firm and none of the
19 other attorneys are aware of any such similar actions.

20 CMO ¶ G(3)(c)(i)

21 52. The Court, at CMO ¶ G(C)(i), states that it "believes that redistribution of the
22 value of uncashed settlement check(s) to those class members who have cashed their checks will
23 better serve the public interest and the interest of the class than distribution in the manner
24 otherwise prescribed by [CCP § 384(b)]" (*i.e.*, payments to a *cy pres*).

25 53. Here, the Parties are not sending the value of uncashed checks to a *cy pres*.
26 Instead, any uncashed checks will be sent to the California State Controller in the name of the
27 Class Member (or Aggrieved Employee). Thus, those funds are – and always will be – paid to
28 and available for collection by the Class Member (or Aggrieved Employee) at any point in the

1 future. This does not fall under the umbrella of CCP § 384(b), as that section only relates to
2 payment of residue to “nonprofit organizations or foundations to support projects that will
3 benefit the class or similarly situated persons, or that promote the law consistent with the
4 objectives and purposes of the underlying cause of action, to child advocacy programs, or to
5 nonprofit organizations providing civil legal services to the indigent.”

6 54. I do not believe there is a need for the Parties to “explain[] the factual basis for
7 the disagreement” with the Court’s proposed method of redistributing funds, because the Court’s
8 proposal is, by its plain language, only applicable in lieu of a *cy pres* (not where the uncashed
9 funds are still paid to the Class Member, essentially held in trust by the State Controller).

10 55. However, in an abundance of caution and to prevent a delay, I want to explain
11 why we do not want to redistribute uncashed checks to class members that did cash checks.

12 56. First, the process to carry out the Court’s proposed redistribution is not as simple
13 as it sounds. Under the CMO’s proposed method, after 180 days have passed, the uncashed
14 funds would be redistributed to Class Members that cashed their checks. That step, on a
15 standalone basis, is not concerning. However, that is nowhere near the end of the process.
16 Indeed, after the second checks are issued, there will be another batch of checks that go
17 uncashed, as there always are in these class actions. What, then, happens to the funds from the
18 uncashed second checks? Are those amounts redistributed again? And to whom? Should the
19 third round of checks only go to those who cashed the first and second checks? Regardless of
20 the answer to these questions, the problem will continue because some of the third checks will
21 likely go uncashed as well, meaning that this process can repeat over and over – each time with a
22 180-day check cashing period.

23 57. Second, the Court’s proposal to redistribute uncashed checks to class members is
24 also problematic because it will greatly increase the cost of settlement administration. After all,
25 the administrator will have to keep banking and taxing accounts open for a much longer period,
26 possibly for multiple years, and will have to issue multiple tax forms with each new payment.
27 But how much extra will the Administrator charge to be exact? And how many additional
28 checks will be mailed a second and third time? How will this be priced? And once the court has

1 approved a specific amount of money for the Settlement Administrator, who will pay for the
2 increased costs, and who will be responsible for ensuring that the increased costs are fair,
3 reasonable and adequate - because after all, this entire process is occurring after the Court has
4 entered judgment.

5 CMO ¶ G(3)(d)

6 58. In accordance with CMO ¶ G(3)(d), we requested bids from five different
7 settlement administrators, which resulted in the following bids: CPT Group (\$10,000), ILYM
8 (\$7,000), Rust Consulting (\$11,950), Xpand (\$8,000) and Phoenix (\$7,000). Phoenix was tied
9 for the lowest bid, so the Parties agreed to retain Phoenix based on its all-in (fixed) fee to
10 administer the settlement for \$7,000, and the fact it has a track record of performing very good
11 work and in accordance with the CMO. The concurrently filed Declaration of Michael Moore of
12 Phoenix covers the other information required in CMO ¶ G(3)(d)(ii).

13 CMO ¶ G(9)(b)

14 59. The paragraphs above provide the information requested in CMO ¶ G(9)(b)(i-iv);
15 this section addresses the remaining requests under CMO ¶ G(9)(b)(v-viii).

16 60. CMO ¶ G(9)(b)(v): I'd first like to point out that a finding of "knowing and
17 intentional" is not necessary under claims for PAGA penalties; that is a required element of wage
18 statement violations (on a class, not PAGA, basis) under Labor Code § 226(e). However, with
19 that said, we believe there is an argument that Defendant's unpaid wage claims would not be
20 found "knowing and intentional" (for purposes of Labor Code § 203, for instance). Additionally,
21 we believed that Defendant had a good argument that the derivative wage statement violations
22 were not "knowing and intentional."

23 61. CMO ¶ G(9)(b)(vi): If this action proceeded to trial, Defendant would have
24 argued for a discretionary reduction in PAGA penalties because the assessment of significant
25 PAGA penalties would be "unjust, arbitrary and oppressive, or confiscatory" in light of "the facts
26 and circumstances of [this] case." *See* Labor Code § 2699(h). Defendant's reliance on several
27 Labor Code exemptions presents a "mistake of law" fact pattern, and similar cases have applied
28 large reductions in PAGA penalties in such situations. *See, e.g., Cotter v. Lyft, Inc.* (N.D. Cal.

2016) 193 F.Supp.3d 1030, 1037 (97.5% reduction in PAGA penalties “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the employer did not “negligently fail to learn about its obligations under the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight answer to the question”).

62. CMO ¶ G(9)(b)(vii): The parties only reached settlement and the agreed-upon PAGA penalties after extensive informal discovery and arms-length negotiation between the parties and through an experienced mediator. Notably, Defendant raised many defenses which, if accepted by the Court, could result in a significant reduction of penalties, or the elimination of penalties altogether through dispositive motions. As such, an assessment of penalties greater than those agreed-upon would be unjust at this stage because this settlement reflects an informed, fundamentally fair, and reasonable settlement of the PAGA claims herein based on the unique facts, defenses, and risks in this case.

63. CMO ¶ G(9)(b)(viii): the sections above show that the amount of the agreed-upon penalties is fair.

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

64. The settlement was the product of extensive arm’s length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

65. The settlement will result in a fair payment to each class member based on the number of weeks worked. Plaintiff and my firm have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’ fees and costs. After

1 evaluating the significant risks attendant with further litigation described above and weighing
2 them against the benefits of a known compromise and settlement as set forth in the Settlement
3 Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and
4 the Class, and is a fair and reasonable resolution of the claims alleged.

5 66. My firm brought to bear a great deal of experience in negotiating the settlement of
6 this case. As detailed herein, I, along with my senior associate Peter Carlson and co-counsel,
7 engaged in the necessary discovery and investigation, making it possible to exercise informed
8 judgment throughout the settlement process, including significant document review (*e.g.*,
9 documents pertaining to Defendant's policies and procedures, personnel documents, among
10 others), and conducted an extensive analysis of the detailed class-wide data provided by
11 Defendant.

12 67. Based on my experience in other cases, including wage and hour matters, I
13 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
14 In this case, the recovery for each class member is reasonable, fair, and adequate, and this
15 settlement is in the best interests of the class. The settlement provides each class member with
16 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
17 obtaining class certification and proceeding to trial.

18 68. My firm and my co-counsel, as well as defense counsel, fully endorse the terms
19 and conditions of the settlement as set forth in the abovementioned Settlement Agreement.

20 69. Of course, the settlement amount represents a compromise figure, taking into
21 account the various risks surrounding class certification and the merits of Defendant's asserted
22 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
23 members, with no reversion to Defendant.

24 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

25 70. Plaintiff seeks an enhancement payment of \$10,000 for his service to the Class,
26 which I believe is fair and warranted. Plaintiff came forward and brought this case in an effort to
27 effectuate a policy and practice change that benefitted all other Class Members (and to recover
28 unpaid wages and other damages). He ultimately succeeded despite significant risk.

1 71. Plaintiff provided invaluable assistance to my office and the Class in this case,
2 including providing factual background; reviewing the litigation documents; providing
3 information and documents about Defendant's policies and practices; participating in phone calls
4 to discuss litigation and settlement strategy; making himself available throughout the litigation to
5 assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation;
6 making himself available for a full-day mediation, and reviewing the settlement documents.
7 Plaintiff agreed to participate in this case with no guarantee of personal benefit.

8 72. The Class Representative also assumed significant risk in bringing this
9 litigation—namely, had he lost, he would have been ordered to pay Defendant's costs. Moreover,
10 Plaintiff elected to pursue the class action claims on behalf of other employees. As part of the
11 negotiations, the parties ultimately reached a settlement of the class claims but the requested
12 service award is also reasonable and appropriate given that Plaintiff agreed to put the interests of
13 the class ahead of his own interests and performed work on behalf of the class. And, as part of
14 the negotiations, Plaintiff put the interests of the class ahead of his interests and agreed to a
15 general release as part of the settlement (whereas the Class will only release the claims alleged).

16 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
17 **REQUESTED FEES AND COSTS**

18 73. As set forth above, I have handled over 250 class and representative actions, have
19 been appointed as class counsel and have successfully resolved over half of those cases, and
20 many others remain pending and will successfully resolve in the future.

21 74. When this case was taken on a contingency fee basis, with my firm agreeing to
22 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
23 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
24 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
25 those expenditures.

26 75. It is my experience that attorney fee awards of one-third of a common fund
27 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
28 Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee is

1 further warranted because it is within the range of reasonableness typically awarded in class
2 actions. The litigation costs are reasonably capped at \$25,000 and will be based on the actual
3 amount of costs incurred at the time of final approval.

4 **SETTLEMENT ADMINISTRATOR**

5 76. The Parties request that the Court appoint Phoenix Settlement Administrators as
6 the Settlement Administrator. In accordance with CMO ¶ G(3)(d), we requested bids from five
7 different settlement administrators, which resulted in the following bids: CPT Group (\$10,000),
8 ILYM (\$7,000), Rust Consulting (\$11,950), Xpand (\$8,000) and Phoenix (\$7,000). Based on its
9 low bid, the Parties agreed to retain Phoenix based on its all-in (fixed) fee to administer the
10 settlement for \$7,000. The concurrently filed Declaration of Michael Moore of Phoenix covers
11 the other information required in CMO ¶ G(3)(d)(ii).

12 **SUBMISSION TO THE LWDA**

13 77. Plaintiff has concurrently submitted the settlement and all moving papers to the
14 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
15 as **Exhibit G**.

16 **EXHIBITS AND CONCLUSION**

17 78. A true and correct copy of the Settlement Agreement is attached as **Exhibit A**.

18 79. The proposed Class Notice is attached as **Exhibit B**.

19 80. The proposed Request for Exclusion Form is attached as **Exhibit C**.

20 81. The proposed Objection Form is attached as **Exhibit D**.

21 82. The proposed Dispute Form is attached as **Exhibit E**.

22 83. A true and correct copy of the notice letter we submitted on behalf of Plaintiff to
23 the LWDA is attached as **Exhibit F**.

24 84. The LWDA's confirmation of receipt of this Motion and Declarations is attached
25 hereto as **Exhibit G**.

26 85. Counsel has carefully reviewed both the terms and the terminology of the order
27 and the accompanying forms (notice, objection form, exclusion form, dispute form) to confirm
28 that the various documents are internally consistent, consistent with each other, and consistent

1 with the settlement agreement.

2 86. For the foregoing reasons, it is respectfully requested that the Court grant
3 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
4 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
5 payment to the Class Representative.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct. Executed on August 29, 2024, at Riverside, California.

8
9 By: 
10 Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Plaintiff, on behalf of all others similarly situated

[Defendant's Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

VICENTE ALVAREZ, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

SPENUZZA, INC., a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2304283

*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

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13 Attorneys for Defendant SPENUZZA, INC.
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1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Vicente Alvarez, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendant Spenuzza, Inc., and is approved
4 by their respective counsel of record, subject to the terms and conditions hereof and the Court's
5 approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Alvarez v. Spenuzza,*
8 *Inc.*, Riverside County Superior Court, Case No. CVRI2304283.

9 2. "Aggrieved Employee(s)" means all current and former nonexempt (hourly paid)
10 employees employed by Defendant in California during the PAGA Period.

11 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
12 Action and PAGA Settlement Agreement.

13 4. "Class" is defined all current and former nonexempt (hourly paid) employees
14 employed by Defendant in California during the Class Period.

15 5. "Class Member(s)" refers to individual member(s) of the Class.

16 6. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
17 Lauby LLP and Mehrdad Bokhour of Bokhour Law Group, P.C.

18 7. "Class Data" means a complete list that Defendant will diligently and in good
19 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
20 which shall include, for each Class Member: the individual's full name; last known address;
21 Social Security Number; and total Workweeks during the PAGA Period and the Class Period.

22 8. "Class Period" is deemed to be any time during the period of February 15, 2020,
23 through August 10, 2024.

24 9. "Complaint" refers to the operative First Amended Complaint, which pleads class
25 action and PAGA representative claims.

26 10. "Court" (or "Judge") means the California Superior Court, County of Riverside.

27 11. "Defendant" means and refers to Defendant Spenuzza, Inc.
28

12. “Defendant’s Counsel” or “Defense Counsel” means and refers to Seyfarth Shaw LLP.

13. “Effective Date” means the latest of the following dates: (i) if no Class Member timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval; (ii) if a Class Member intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

14. “Escalator Clause:” Defendant represents that there are approximately 220 Class Members, who collectively worked a total of approximately 24,000 Workweeks from February 15, 2020 through June 11, 2024 (the date of mediation). If the total count of Workweeks (as contained in the Class Data) exceeds 26,400, then the Settlement Amount shall increase by \$30.00 (\$720,000 divided by 24,000) for each additional Workweek above 26,400. Alternatively, Defendant may, at its sole option and in lieu of payment for additional Workweeks above 26,400, choose to cut off the end dates for the Class Period as of the date on which the number of workweeks reaches 26,400.

15. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties.

16. “Individual Class Payment” refers to each Participating Class Members share of the Net Settlement Amount, as further discussed in Paragraph 47(c) below.

17. “Individual PAGA Payment” refers to each Aggrieved Employees share of the PAGA Penalties, as further discussed in Paragraph 47(c) below.

18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b) below.

19. “Notice” means the notice of proposed class settlement that will be sent to Class

Members, and which will advise each Class Member of the settlement and estimated Individual Class and PAGA Payments, and will further advise of the setting of a Final Approval Hearing.

20. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection Form, and the Dispute Form to be sent to all Class Members.

21. “Objecting Class Member” means a Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c) below.

22. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the individual PAGA payment allocated to each Aggrieved Employee.

23. “PAGA Period” is deemed to be any time during the period of August 9, 2022, through August 10, 2024.

24. “Participating Class Member” means any and all Class Members who are deemed to participate and receive an Individual Class Payment and do not opt-out by submitting timely valid Requests for Exclusion.

25. “Parties” or “Settling Parties” mean Plaintiff and Defendant, collectively.

26. “Plaintiff” or “Class Representative” means and refers to Plaintiff Vicente Alvarez.

27. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to review

and comment upon the motion before it is filed.

29. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and from which the settlement payments shall be made.

30. “Released Class Claims” by the Participating Class Members upon Final Approval of the Settlement will include the claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to timely pay final wages; (6) failure to provide accurate itemized wage statements; (7) unfair and unlawful competition under Business and Professions Code §§ 17200 et seq.; as well as claims arising under California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199; and claims alleged under the applicable California Industrial Welfare Commission Wage Order. The time period governing the Released Class Claims shall be any time during the Class Period.

31. “Released PAGA Claims” means any and all PAGA Claims that Plaintiff alleged against the Released Parties, based on the facts stated in the relevant LWDA notice letters and only to the extent that they are alleged in the Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to timely pay wages each period; (6) failure to timely pay wages upon separation of employment; (7) failure to provide accurate itemized wage statements; (8) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint, including claims that are premised upon California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and claims covered by the Released Class Claims, against the Released Parties. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

32. “Released Parties” means Defendant, and all of its present and former officers, director, employees, and agents.

33. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the Class Members.

34. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a) below.

35. “Settlement Amount” is \$720,000, subject to the Escalator Clause and exclusive of Defendant’s obligation to fund its share of payroll taxes owed on Individual Class Payments, as further discussed in Paragraph 47(c) below.

36. “Service Payment” means the amount approved by the Court to be paid to Plaintiff in addition to his Individual Settlement Payment as a Participating Class Member and Individual PAGA payment as an Aggrieved Employee.

37. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

38. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by the Court, regardless of any additional costs that the Settlement Administrator may request or feel is necessary to administer the Settlement.

39. “Workweeks” in the context of a Class Members means any and all workweeks during the Class Period during which the Class Member performed work for Defendant. Likewise, in the context of Aggrieved Employees, it means any and all weeks worked during the

PAGA Period during which the Aggrieved Employee performed work for Defendant.

B. General Terms

40. On August 9, 2023, Plaintiff filed the instant class action, alleging that Defendant violated various sections of the Labor Code. On the same day, Plaintiff gave written notice by an online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Then, on November 9, 2023, Plaintiff filed a First Amended Complaint adding causes of action under PAGA. Given that the Parties have settled this matter in its entirety, the Parties agree that no additional answer or responsive pleading to the First Amended Complaint is required, unless and until one is ordered by the Court.

41. Defendant denies Plaintiff’s claims and allegations and contends that the Action is not suitable for class certification.

42. Plaintiff believes he can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

43. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery prior to mediation. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation of the Class Members’ claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

44. On June 11, 2024, the Parties attended a mediation session with Steve Serratore, Esq., a well-respected wage-and-hour mediator. At the conclusion of mediation, and after

extensive arms-length negotiations, Mr. Serratore issued a mediator's proposal which was ultimately accepted by the Parties.

45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendant stipulates that the Class Members described herein who do not Request Exclusion from the Class may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in this Action in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declare that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, subject to the Escalator Clause and Defendant's obligation to separately pay its share of employer-side payroll taxes owed on the wage portion of Individual Class Payments, which is the maximum amount that will be paid by Defendant, and this includes payments to the Participating Class Members, PAGA Penalties (to the Aggrieved Employees and LWDA), Attorneys' Fees and Costs Award, the Service Payment to Plaintiff, and Settlement Administration Costs. The Settlement Amount is a material term of this Agreement. Except as it relates to the Escalator Clause and Defendant's obligation to separately pay its share of payroll

1 taxes, to the extent the Court orders Defendant to pay more than the Settlement Amount as part
2 of this Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify
3 this Agreement.

4 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
5 Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to Plaintiff
6 as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court
7 reduces the Attorneys’ Fees and Costs Award, Service Payment, or Settlement Administrator
8 Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the
9 difference shall be placed in the Net Settlement Amount and allocated to the Participating Class
10 Members.

11 (c) Individual Class Payments for the Class will be calculated and apportioned
12 from the Net Settlement Amount based on the number of Workweeks by a Class Member during
13 the Class Period. Each specific Individual Class Payment will be calculated by: (a) dividing the
14 Net Settlement Amount by the total number of Workweeks by all Participating Class Members
15 during the Class Period, and (b) multiplying the result by each Participating Class Members’
16 Workweeks. The entire Net Settlement Amount will be disbursed to all Participating Class
17 Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator
18 shall proportionally increase the Individual Class Payment for each Participating Class Member
19 according to the number of Workweeks, so that the amount actually distributed to Participating
20 Class Members equals one hundred percent (100%) of the Net Settlement Amount.

21 (d) Allocation of Individual Class Payments: The Individual Class Payments
22 to Participating Class Members shall be allocated as ten percent (10%) as wages subject to
23 withholding of all applicable local, state and federal taxes, and ninety percent (90%) for interest
24 and statutory penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226) from
25 which no taxes will be withheld. The Settlement Administrator will issue to each Participating
26 Class Member (as applicable) an Internal Revenue Service Form W-2 and comparable state
27 forms with respect to the wage allocation and/or a Form 1099 with respect to the penalties and
28 interest allocations.

1 (e) Service Payment to Plaintiff: The amount, if any, awarded to the Plaintiff
2 as a Service Payment will be set by the Court in its discretion, not to exceed \$10,000, in
3 exchange for the service that Plaintiff performed on behalf of the Class. Defendant agrees not to
4 oppose this request. The Service Payment to Plaintiff will be paid out of the Settlement Amount.
5 Plaintiff will be issued an IRS Form 1099 in connection with this payment. Plaintiff shall be
6 solely and legally responsible to pay any and all applicable taxes on this payment. The Parties
7 agree that any amount awarded as the Service Payment to Plaintiff less than the requested
8 amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the
9 Court approve a lesser amount for the Service Payment, the difference shall be added to the Net
10 Settlement Amount to be distributed to the Participating Class Members.

11 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
12 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
13 Settlement Amount, plus verified and reasonable litigation costs not to exceed \$25,000
14 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class
15 Counsel that attorneys' fees should be based on the common fund theory. The Attorneys' Fee
16 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
17 Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class
18 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
19 difference shall be added to the Net Settlement Amount to be distributed to the Participating
20 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
21 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
22 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
23 of attorneys' fees and costs awarded by the Court.

24 (g) Settlement Administration Costs: The fees and other charges of the
25 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$7,000, unless
26 (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
27 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
28 approval), or (2) as otherwise approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004 (“PAGA”) and \$10,000 (25%) will form the Individual PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata on a Workweek basis, which will be treated as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel and Defendant make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by Class Counsel or Defendant in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein.

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE

RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

(k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Participating Class Members and Aggrieved Employees will not have to make a claim to receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of Individual Class Payment or Individual PAGA Payments will be made directly to each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

(l) Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and will so represent same to the Court.

D. Release by the Participating Class Members

48. Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount, and except as to such rights or claims as may be created by this Agreement, Plaintiff and the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period. The scope of the Released Class Claims is a material term of this Agreement and the Parties agree to comply with the Court's Case Management Order in defining the Released Class Claims. To the extent the Court orders the Parties to modify the scope of the Released Class Claims, the Parties will meet and confer in good faith and attempt to address the Court's concern.

49. Each Participating Class Member will be deemed to have made the foregoing release as if by manually signing it.

50. Plaintiff, on behalf of himself and the Class, acknowledges and agrees that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Plaintiff, on behalf of himself and the Class, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent part as follows: "An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

E. Release of PAGA Claims

51. Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount, Plaintiff and the State of California and the LWDA shall completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Period. The scope of the Released PAGA Claims is a material term of this Agreement and the Parties agree to comply with the Court's Case Management Order in defining the Released PAGA Claims. To the extent the Court orders the Parties to modify the scope of the Released PAGA Claims, the Parties will meet and confer in good faith and attempt to address the Court's concern.

52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any

1 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
2 releasing the Released PAGA Claims.

3 53. It is the intent of the Parties that the Final Approval Order shall have full
4 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

5 **F. Release by Plaintiff**

6 54. Plaintiff does hereby, for himself and his spouses, heirs, successors, beneficiaries,
7 devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
8 representatives, and assigns forever and completely release and discharge the Released Parties
9 from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
10 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
11 expenses (including back wages, statutory penalties, civil penalties, liquidated damages,
12 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the
13 beginning of time through the execution of this Agreement, whether known or unknown,
14 suspected or unsuspected, including but not limited to all claims arising out of, based upon, or
15 relating to Plaintiff's employment with Defendant or the remuneration for or termination of such
16 employment (the "Plaintiff's Claims").

17 55. Without limiting the generality of the foregoing, this general release by Plaintiff
18 includes all federal, state and local statutory claims, federal and state common law claims
19 (including but not limited to those for contract, tort and equity), including without limitation any
20 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
21 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
22 (except workers' compensation benefits); claims for failure to hire, public policy violations,
23 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or
24 other common law or tort matters; claims of harassment, retaliation or discrimination based on
25 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
26 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
27 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
28 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.

1 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
2 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendant's right
3 to terminate, not to hire or promote employees, or to change an employee's compensation; and
4 claims based on any federal, state or other governmental statute, regulation or ordinance, all
5 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
6 expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
7 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
8 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
9 California Fair Employment and Housing Act, the California Unfair Competition Act (California
10 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
11 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
12 allegations regardless of the forum in which they may be brought, to the fullest extent such
13 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
14 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
15 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon
16 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
17 claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other
18 penalties recoverable for such claims under PAGA.

19 56. Plaintiff agrees that there is a risk that any injury that he may have suffered by
20 reason of the Released Parties' relationship with them might not now be known, and there is a
21 further risk that said injuries, whether known or unknown at the date of this Settlement
22 Agreement, might possibly become progressively worse, and that as a result thereof further
23 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
24 discharge the Released Parties and understands that, by the execution of this Settlement
25 Agreement, no further claims for any such injuries that existed at the time of the execution of this
26 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
27 period from the beginning of time to the execution of this Settlement Agreement.

28 57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by

Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff acknowledges and agrees that this knowing and voluntary waiver is an essential and material term of this Settlement Agreement, and the Settlement Agreement would not have been entered into without such a waiver.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Plaintiff expressly acknowledges that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiff knew of, as well as all claims that he does not know or suspect to exist in his favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Plaintiff's claims. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

G. Interim Stay of Proceedings

58. Pending completion of all prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

H. Notice Process

59. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses,

independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

60. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

61. Class Data. Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Although Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

62. Total Workweeks. At least five (5) calendar days prior to mailing the Notice Packet, the Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary calculation of all payments to be paid from the Settlement

1 Amount, including the estimated Individual Class Payments to each Class Member and
2 Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and
3 a control number used in place of the name). In the event that the total Workweeks worked by
4 all Class Members triggers the Escalator Clause, the Settlement Administrator shall notify the
5 Parties of the increased Settlement Amount, and shall modify the Notice (where needed) to
6 reflect the increased Settlement Amount and related increased payments from the Settlement
7 Amount, or the revised Class Period, including increased Attorneys' Fees and Costs and any
8 increased Settlement Administration Costs (if applicable), all of which shall be subject to Court
9 approval.

10 63. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
11 Settlement Administrator to the Class Members, by first class mail, in English and Spanish,
12 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
13 For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form,
14 an Objection Form, and a Dispute Form. The Settlement Administrator shall use standard
15 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
16 envelopes are returned.

17 64. Returned Notice Packets. The Settlement Administrator will take steps to ensure
18 that the Notice Packet is received by all Class Members, including utilization of the National
19 Change of Address Database maintained by the United States Postal Service to review the
20 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
21 Member for whom an updated address is located within ten (10) calendar days following both
22 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.
23 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
24 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
25 the Response Deadline or fifteen (15) calendar days after the remailing of the Notice Packet.

26 65. Presumption Regarding Receipt of Notice Packet. It will be conclusively
27 presumed that if an envelope has not been returned to Settlement Administrator by the Response
28 Deadline that the Class Member received the Notice Packet.

66. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class Payment and Individual PAGA Payment, as well as the number of Workweeks during the Class Period and the PAGA Period. Class Members may dispute their Workweeks by timely submitting evidence to the Settlement Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks, and estimated Individual Class and PAGA Payments. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render a final decision. Class Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

67. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

68. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Class Claims portion of the Settlement. The Notice Packet will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Class. Any Class Member, other than Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the Settlement Administrator and postmarked on or before the Response Deadline in order to be timely, unless the Parties otherwise agree in writing. Any such Request must be made in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall

1 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
2 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
3 with these requirements: (i) will not have any rights under this Agreement, including the right to
4 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
5 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
6 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
7 to the Released PAGA Claims to the fullest extent permitted by law and receive an Individual
8 PAGA Payment. All Parties and their counsel, including Defendant and their agents and
9 employees, shall not encourage or solicit opt-outs or objections, directly or indirectly, through
10 any means.

11 (b) Binding Effect on Participating Class Members. All Participating Class
12 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
13 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
14 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
15 Settlement.

16 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
17 does not submit a valid and timely Request for Exclusion may object to the terms of this
18 Agreement by completing the Objection Form provided within the Notice Packet. Any Class
19 Member that intends to object must mail the Objection Form to the Settlement Administrator.
20 The Objection Form must be postmarked on or before the Response Deadline in order to be
21 timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made
22 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
23 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
24 and the Settlement Administrator shall attach the same to its declaration of due diligence and file
25 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
26 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
27 and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class
28 Member and/or his or her counsel related to any objections to the Settlement. Submitting an

objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663.

(d) Failure to Object. Any Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure § 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may file a response to any objections submitted by Objecting Class Members at least five (5) court days before the date of the Final Approval Hearing.

(f) Class Members will have until the Response Deadline to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

69. Funding of the Settlement Amount. Defendant shall deposit the Settlement Amount with the Settlement Administrator within sixty (60) calendar days after the Effective Date.

70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual Class Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Plaintiff, the payment to the LWDA for its portion of the PAGA Penalties, and will pay itself the Settlement Administration Costs.

71. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. The release will be binding upon all Participating

Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

a. If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

b. If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Aggrieved Employee.

I. Duties of the Parties Prior to the Court's Approval

72. Promptly after execution of this Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payments;

- (b) Approving as to form and content the proposed Notice Packet;
- (c) Directing the mailing of the Notice Packet by first class mail to the Class Members;
- (d) Preliminarily approving this Settlement;
- (e) Preliminarily certifying the class for purposes of this Settlement; and
- (f) Advising the LWDA of the proposed Settlement.

J. Duties of the Parties Following Court's Final Approval

73. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Plaintiff, and the payment to the Settlement Administrator for costs of administering the settlement; and
- (c) Entering judgment approving settlement.

K. Voiding the Agreement

74. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

75. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

76. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

1 **L. Other Terms**

2 77. Waiver. The waiver by one Party of any breach of this Agreement by another
3 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

4 78. Parties' Authority. The signatories hereto represent that they are fully authorized
5 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

6 79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
7 accomplish the terms of this Agreement, including but not limited to, execution of such
8 documents and to take such other action as may reasonably be necessary to implement the terms
9 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
10 contemplated by this Agreement and any other efforts that may become necessary by order of the
11 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
12 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
13 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
14 preliminary and final approval of the settlement, and the final entry of judgment.

15 80. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
16 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
17 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
18 cause of action or rights released and discharged by this Agreement.

19 81. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
20 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
21 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle
22 and compromise the matters at issue in the Complaint to avoid further substantial expense and
23 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
24 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
25 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is
26 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
27 conditions set forth in this Agreement.
28

1 82. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
2 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
3 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
4 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
5 Agreement with the intention of avoiding further disputes and litigation with the attendant
6 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
7 related documents such as the notices, and motions for preliminary and final approval, shall,
8 pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be
9 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
10 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
11 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
12 approved, the stipulation will be of no force or effect.

13 83. No Publicity. The Parties will not publicize the Settlement or disclose it to third
14 parties prior to the Court granting Preliminary Approval, except as required or necessary to
15 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and the
16 Plaintiff agree that they will not discuss the Settlement with the media, any settlement and
17 verdict reporting service, any social media postings or other Internet postings. Nothing herein
18 shall be construed to prevent Class Counsel from the public filing of motions or other case
19 materials in the Action related to seeking and obtaining Court approval of this Settlement and the
20 related awards of attorneys' fees and costs, or to communications with Class Members or their
21 representatives about this Settlement, including through the posting of Court-filed documents on
22 Class Counsel's websites for access solely by the Class Members, or to prevent the Parties or
23 their representatives from communicating with financial or legal advisors regarding the
24 Settlement. In response to any media inquiry, Class Counsel may state only that the Action has
25 been settled on terms mutually agreeable to the Parties.

26 84. Notices. Unless otherwise specifically provided herein, all notices, demands or
27 other communications given hereunder shall be in writing and shall be deemed to have been duly
28

given as of the third business day after mailing by United States registered or certified mail,
return receipt requested, addressed:

To the Class:

Brian J. Mankin
brian@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Michael Afar, Esq.
mafar@seyfarth.com
Seyfarth Shaw LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067-3021
Tel: (310) 277-7200 | Fax: (310) 201-5219

85. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further 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.

86. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

87. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

88. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

89. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

90. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

91. Binding On Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

92. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice Packet will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

93. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

8/27/2024

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE


020C5EA714AE466...

Vicente Alvarez

Dated: _____

DEFENDANT SPENUZZA, INC.

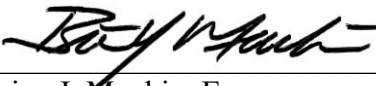
By: _____

Title: _____

APPROVED AS TO FORM:

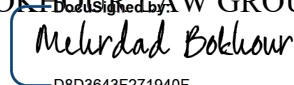
Dated: 8/27/2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin, Esq.
Attorneys for Plaintiff

Dated: 8/27/2024

CLASS COUNSEL
BOKHOUR LAW GROUP, P.C.


D8D3643F271940F...
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff

Dated: _____

DEFENSE COUNSEL:
SEYFARTH SHAW LLP

Michael Afar, Esq.
Attorneys for Defendant

Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

Vicente Alvarez

Dated: 8/27/2024

DEFENDANT SPENUZZA, INC.

DocuSigned by:
Michael Thompson
972F3A1A94B5411...

By: Michael Thompson

Title: Vice President

APPROVED AS TO FORM:

Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

Brian J. Mankin, Esq.
Attorneys for Plaintiff

Dated: _____

CLASS COUNSEL
BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.
Attorneys for Plaintiff

Dated: 8/26/2024

DEFENSE COUNSEL:
SEYFARTH SHAW LLP

DocuSigned by:
Michael Afar
1B8E85B395EF4B2...

Michael Afar, Esq.
Attorneys for Defendant

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Alvarez v. Spenuzza, Inc.

(Riverside County Superior Court, Case No. CVRI2304283)

***The Riverside County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a class action lawsuit filed by Vicente Alvarez (“Plaintiff” or “Class Representative”) against Defendant Spenuzza, Inc. (“Defendant”) for alleged violations of the California Labor Code (the “Action”). (Plaintiff and Defendant shall be collectively referred to as the “Parties”).

The Action seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of all Class Members, who are defined as “all current and former nonexempt (hourly paid) employees employed by Defendant in California during the Class Period (which is February 15, 2020, through August 10, 2024)”; and (2) penalties under the California Private Attorneys General Act (“PAGA”) on behalf of all Aggrieved Employees, who are defined as “all current and former nonexempt (hourly paid) employees employed by Defendant in California during the PAGA Period (which is August 9, 2022, through August 10, 2024). PAGA is a California law that allows employees to bring claims for civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and all Aggrieved Employees for alleged violations of the Labor Code, and any payment for PAGA penalties shall be paid 75% to the LWDA and 25% to all Aggrieved Employees as civil penalties (rather than wages).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the LWDA. Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[**CLASS MEMBER NAME**] [**ID/CONTROL NUMBER**]

<i>Calculations and Data Points for Estimated Individual PAGA Payment</i>	
Weeks Worked during Class Period	<i>Estimated Individual Class Payment</i>
INSERT	INSERT

<i>Calculations and Data Points for Estimated Individual PAGA Payment</i>	
Weeks Worked during PAGA Period	<i>Estimated Individual PAGA Payment</i>
INSERT	INSERT

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment then, according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work for Defendant in California during the PAGA Period.) If you believe that you worked more weeks during the periods than are shown in the chart above, you can submit a challenge by **DATE** (“**Response Deadline**”). See **Section 4, subsection 3** of this Notice.

In granting preliminarily approval of the proposed Settlement and approving this Notice, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant in California during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 below .
EXCLUDE YOURSELF	If you do not wish to participate in the proposed Settlement of the Class Claims, you may “opt-out” of the Settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion form by [REDACTED] (see Section 6 below for more details on how to opt-out). If you opt-out, you will no longer be a participating Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection Form stating why you object to the settlement by [REDACTED] (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to Phoenix Settlement Administrators (the “Settlement Administrator”), a third party responsible for sending this Notice. (see Section 4 for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: DATE TIME: 8:30 A.M.	The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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, by telephone or by using the Court’s virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws due to the alleged: failure to pay minimum and overtime wages, failure to provide meal periods and rest breaks, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA.

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

Both Parties are represented by attorneys in the Action. See Section 9 below for their contact information.

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

The Parties hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits, and has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at final hearing. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. Defendant Will Pay \$720,000 as the gross settlement amount (the “Settlement Amount”). Defendant has agreed to pay a total Settlement Amount of \$720,000 and will deposit the Settlement Amount into an account controlled by the Settlement Administrator. The Settlement Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative’s Service Payment, Class Counsel’s attorney’s fees and expenses, the Settlement Administrator’s Costs, and PAGA Penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Settlement Amount not more than sixty (60) days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if the Judgment is appealed.

2. Court Approved Deductions from Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third (1/3) of the Settlement Amount to Class Counsel for attorneys’ fees, plus reasonable costs and expenses not to exceed \$25,000. To date, Class Counsel have incurred expenses on the Action without payment.

B. Up to \$10,000 to the Class Representative as a Service Payment for litigating the Action, working with Class Counsel, and representing the Class. The Service Payments will be the only monies the Plaintiff will receive other than his Individual Class Payment and any Individual PAGA payment.

C. \$7,000 to the Settlement Administrator for services administering the Settlement.

D. \$40,000 for PAGA Penalties, allocated 75% to the LWDA and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Settlement Administrator will distribute the rest of the remainder of the Settlement Amount (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of total Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an

allocation of ten percent (10%) of each Individual Class Payment to taxable wages (“Wage Portion”) and ninety percent (90%) to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer-side payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the “void date”). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California State Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or the “Released Parties” (which means Defendant, and all of its present and former officers, director, employees, and agents) based on the facts alleged in the Action for wages based on the facts alleged in the Action for the duration of the Class Period, which are resolved by this Settlement.

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

All Participating Class Members release the Defendant and the Released Parties from any and the claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to timely pay final wages; (6) failure to provide accurate itemized wage statements; (7) unfair and unlawful competition under Business and Professions Code §§ 17200 et seq.; as well as claims arising under California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199; and claims alleged under the applicable California Industrial Welfare Commission Wage Order. Additionally, this definition of “Released Class Claims” expressly excludes all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, claims while classified as exempt, and claims outside of the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff and the State of California and the LWDA shall completely release and discharge the Released Parties from the Released PAGA Claims for the PAGA Period, including all PAGA Claims that Plaintiff alleged against the Released Parties, based on the facts stated in the relevant LWDA notice letters and only to the extent that they are alleged in the Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to timely pay wages each period; (6) failure to timely pay wages upon separation of employment; (7) failure to provide accurate itemized wage statements; (8) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint, including claims that are premised upon California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and claims covered by the Released Class Claims, against the Released Parties. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

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

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Members' Weeks Worked during the Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class and PAGA Periods, as recorded in Defendant's records, are stated in the tables on page 1 of this Notice. You have until **DATE** (the "Response Deadline") to dispute the number of Workweeks credited to you by mailing the enclosed Dispute Form to the Settlement Administrator on or before [INSERT DATE 45 Days After Mailing]. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Settlement Administrator will accept Defendant's calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Settlement Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who does not opt-out) and qualified Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members/Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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

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

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the

Settlement, not later than the Response Deadline. To opt-out, you must complete, sign, and mail the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before the Response Deadline (as a reminder, **the “Response Deadline” is DATE**). Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment, as to the Released Class Claims.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 on the Objection Form, **postmarked** on or before the Response Deadline. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], _____, at _____ a.m./p.m., the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the enclosed Request for Exclusion Form, Dispute Form, or Objection Form, or the Settlement itself, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice and request for Exclusion, Objection, and Dispute Forms be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them at the information below. You may also seek advice and guidance from your own private attorney at your own expense if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on **DATE** and available to be inspected at any time during regular business hours at the Clerk’s Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk’s Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on “Case Number Search,” then create a free online account, then type in the case number (CVRI2304283) where requested, and click “Search.” You may also email Class Counsel and request a copy of the Settlement Agreement.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

The contact information for Class Counsel and the Settlement Administrator are below:

Class Counsel		Settlement Administrator
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Mehrdad Bokhour, Esq. <i>mehrdad@bokhourlaw.com</i> Bokhour Law Group, P.C. 1901 Avenue of the Stars, Suite 450 Los Angeles, CA 90067 Tel: (310) 975-1493	Name Mailing Address Telephone Number

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT “C”

REQUEST FOR EXCLUSION FORM

Alvarez v. Spenuzza, Inc.

(Riverside County Superior Court, Case No. CVRI2304283)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Alvarez v. Spenuzza, Inc.* (Riverside Superior Court Case No. CVRI2304283). I understand by excluding myself that I will no longer be a Class Member, and I will not receive an Individual Class Payment. I further understand that I cannot opt-out of the PAGA portion of the Settlement, and that if I qualify as an Aggrieved Employee (see first page of the Notice), I will receive an Individual PAGA Payment and give up my rights to pursue the Released PAGA Claims even if I exclude myself.

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “D”

OBJECTION FORM

Alvarez v. Spenuzza, Inc.

(Riverside County Superior Court, Case No. CVRI2304283)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Alvarez v. Spenuzza, Inc.* (Riverside Superior Court Case No. CVRI2304283) on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2024
[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “E”

DISPUTE FORM

Alvarez v. Spenuzza, Inc.

(Riverside County Superior Court, Case No. CVRI2304283)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

The following charts are based on the records of Defendant Spenuzza, Inc. and reflect the number of weeks worked for Defendant in California as a nonexempt (hourly paid) employee during the applicable periods.

<i>Data Points for Calculations of Individual Class Payment</i>	
Weeks Worked from 2/15/2020 to 8/10/2024	INSERT

<i>Data Points for Calculations of Individual PAGA Payment</i>	
Weeks Worked from 8/9/2022 to 8/10/2024	INSERT

DO YOU DISAGREE WITH ANY OF THE INFORMATION ABOVE AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM.

Please state why you believe that you should be credited with more Weeks Worked than shown in the chart and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination as to these issues.

Signed on _____, 2024 **[NAME]** _____

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN **[INSERT DEADLINE]**:

<u>Settlement Administrator:</u>
Name Mailing Address Telephone Number

EXHIBIT “F”



MEHRDAD BOKHOUR
Attorney at Law

1901 Avenue of the Stars | Suite 450
Los Angeles | California 90067

tel 310 975 1493
fax 310 675 0861

August 9, 2023

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Spenuzza, Inc.
1400 Toastmaster Drive
Elgin, IL 60120

Spenuzza, Inc.
C/o CT Corporation
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

Spenuzza, Inc.
1128 Sherborn St.
Corona, CA 92879

Re: PAGA Civil Penalty Claim
Vicente Alvarez v. Spenuzza, Inc.

To the Labor and Workforce Development Agency and Penn Emblem Company:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Vicente Alvarez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer, Spenuzza, Inc. and any affiliated entities (collectively, the “Company”), for violations of Labor Code §§ 200 through 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately March 2022 through August 2023. Claimant alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant alleges that he and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation in the form of nondiscretionary bonuses. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these

amounts in the calculations for Claimant's regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was not permitted to leave the premises for rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate "calculated in the same manner as the regular rate of pay."

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the entities listed herein and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein are an integrated enterprise and should be treated as a single employer because the entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein share common management, a centralized control of labor operations, and common ownership or financial control. Claimant also alleges the entities listed herein were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others.

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay proper overtime. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.”

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive

dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross wages earned, all deductions, and net wages earned (due to, for example, the failure to pay all required minimum and overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start and end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

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August 9, 2023

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CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call.

Very Truly Yours,

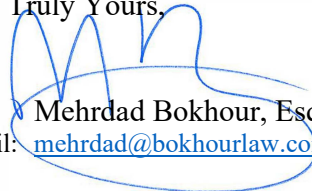
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EXHIBIT “G”