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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

VENITA BALL an individual on behalf of
himself and others similarly situated,

Plaintiff,

vs.

ADVANCE NURSING SERVICES, INC., a
California corporation; THE ARROYO –
WOMEN’S SHELTER, a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23STCV18600

CLASS ACTION

Assigned for All Purposes To:
Hon. David S. Cunningham III

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

Date: August 8, 2025
Time: 10:00 a.m.
Dept.: SS11

Original Complaint Filed: August 4, 2023
First Amended Complaint Filed: October 6,
2023
Trial Date: None Set

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1 California in Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in
2 Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-
3 cv-01084-L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los
4 Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles,
5 BC 632 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
6 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in
7 Los Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior
8 Court of California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc.
9 (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v.
10 Victor Valley Global et al. (Superior Court of California in San Bernardino, CIVDS1709289),
11 Puerta-Gildardo v. Real Time Staffing Services LLC et. al. (Superior Court of California in Los
12 Angeles, BC565445), Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in
13 Tulare, 270836), Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-
14 cv-05534-LHK), Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-
15 cv-04910-FMO), Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-
16 02356-H-JMA), Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-
17 RAO), Leach v. The Claremont Colleges, Inc. (Superior Court of California in Los Angeles,
18 BC686451), Vaesau v. PCT Enterprises, Inc. dba Precision Cabinets (Superior Court of
19 California, County of Contra Costa MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area
20 Beverage Company (Superior Court of the State of California, County of Contra Costa, MSC18-
21 00859), Roach v. Westcare California, Inc. (Superior Court of California in Kern County, BCV-
22 17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central District of California, EDCV 18-
23 903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court of California in Madera,
24 MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court of California in Los
25 Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al. (Superior Court of
26 California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of
27 California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of
28 California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court

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

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

26 7. Attorney David Yeremian is Managing Attorney at D.Law and counsel of record for
27 Plaintiff. Mr. Yeremian graduated from UC Berkeley in 1997 and received his law degree and
28 MBA from UCLA in 2001. Mr. Yeremian has been honored as a Super Lawyers Rising Star in

1 2009, 2010, 2012-2015 and has been named and honored as a Super Lawyer. Since 2007, Mr.
2 Yeremian has focused exclusively on representing employees, including in wage-and-hour class
3 actions. During his career, Mr. Yeremian has represented employees in hundreds of wage-and-
4 hour class action lawsuits as lead or co-lead counsel (including in the Central, Southern, Eastern,
5 and Northern Districts of California), and has obtained six and seven-figure settlements against a
6 range of defendants, including Fortune 500 companies.

7 8. Attorney Natalie Haritounian is Senior Counsel at D.Law and counsel of record for
8 Plaintiff. Ms. Haritounian received her Bachelor of Arts in political science from the University
9 of California, Los Angeles, in 2014, and then earned her Juris Doctorate from the University of
10 Southern California, Gould School of Law in 2018. Upon graduating from law school, Ms.
11 Haritounian has exclusively focused her practice on representing employees, including in wage-
12 and-hour class actions. During her career, Ms. Haritounian has represented employees in wage-
13 and-hour class action lawsuits as lead or co-lead counsel, and has also obtained six and seven
14 figure settlements against a range of defendants.

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

26 10. For purposes of this motion, the “Class” or “Class Members” consist of “all current and
27 former employees within the State of California who, at any time from August 4, 2019, to January
28 19, 2025, are or were employed as non-exempt hourly employees by Defendant.” I do not believe

1 that I have any conflicts of interest with the Class or with the Class Representative. I am not
2 related to the Class Representative. I have not previously represented Defendant in any matter. I
3 respectfully submit that I and D.Law are well suited to act as Class Counsel in this action, and we
4 have and will continue to vigorously represent the interests of the Class Members.

5 PROCEDURAL HISTORY

6 11. On August 4, 2023, Plaintiff filed a class action complaint against Defendant alleging
7 ten causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime
8 Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break
9 Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor
10 Code § 203; (7) Violation of Labor Code §204; (8) Failure to Keep Required Payroll Records
11 Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses §
12 2802; and (10) Failure to Provide One Day's Rest in Violation of Labor Code §§ 551 and 552;
13 (11) Violation of Labor Code § 246; (12) Failure to Produce Requested Employment Records
14 Under Labor Code §§ 226(b), 1198.5; (13) Violation of Business & Professions Code § 17200 *et*
15 *seq.* Plaintiff contends that Defendant failed to pay Class Members all wages due and owing,
16 including by requiring off the clock work, unlawfully rounding to their detriment, failing to
17 provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay
18 wages including final wages, failing to maintain accurate records, failing to reimburse necessary
19 business expenses, failing to provide one day's rest in seven, and failing to provide required sick
20 days.

21 12. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice
22 to Defendant and the Labor Workforce Development Agency ("LWDA") by sending her Private
23 Attorneys General Act ("PAGA") Notice on August 4, 2023 (LWDA-CM-973018-23). A true
24 and correct copy of the confirmatory email and the LWDA letter submitted on behalf of Plaintiff
25 is attached hereto as **Exhibit 2**. The LWDA did not express an interest in investigating Plaintiff's
26 claims within the 65-day period. Therefore, on October 6, 2023, Plaintiff filed a First Amended
27 Complaint adding a cause of action for penalties under PAGA.

28 INVESTIGATION AND DISCOVERY

1 13. Before filing the lawsuit, Class Counsel investigated and researched the facts and
2 circumstances underlying the pertinent issues and the law applicable thereto. This required
3 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
4 research into the various legal issues involved in the case. After conducting their initial
5 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and
6 representative action adjudication owing to what appeared to be a common course of conduct
7 affecting a similarly situated group of employees.

8 14. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
9 and claims giving rise to the action, including: (1) conducting informal discovery and meeting
10 and conferring with defense counsel about the same; (2) reviewing and analyzing a sampling of
11 time and pay records as well as employment handbooks, Plaintiff's personnel file, relevant
12 policies and other documentation; (3) researching the applicable law and potential defenses; (4)
13 constructing damage models based on interpretations of California law; and (5) reviewing
14 information provided by Defendant at mediation. The Class enumerated in this action is
15 ascertainable because the Class Members may be readily identified by reference to Defendant's
16 records. Defendant has agreed to share the information from these records with the Settlement
17 Administrator in order to identify and contact the Class Members. Defendant has represented that
18 there are approximately 1,298 total Class Members.

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

24 16. On July 16, 2024, the parties attended mediation with Brandon McKelvey, Esq., a
25 respected and highly experienced mediator in wage and hour class actions. During mediation,
26 Plaintiff and Defendant's counsel discussed all aspects of the case, including the risks of litigation
27 and the risks to both parties of proceeding with a motion for class certification as well as the law
28 relating to unpaid wages, meal periods, rest periods, wage statements, reimbursement of business

1 expenses, sick pay, and final pay. As a result of the mediation, the parties agreed to settle the
2 lawsuit according to the terms set forth in the Settlement Agreement.

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

13 **SUMMARY OF SETTLEMENT**

14 18. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay
15 Three Hundred Eighty-Six Thousand Three Hundred Thirty Dollars and Zero Cents
16 (\$386,330.00) ("Gross Settlement Amount") on a non-reversionary basis to settle and release all
17 claims asserted by Plaintiff in the Action on behalf of the proposed Class. (Exh. 1, §3(a))

18 19. The Settlement Agreement defines the "Class" as "all current and former employees
19 within the State of California who, at any time from August 4, 2019, to January 19, 2025, are or
20 were employed as non-exempt hourly employees by Defendant." (Exh. 1, §1.5) However, it does
21 not include any person who submits a timely and valid request for exclusion. (Exh. 1, §7.5.4)
22 "Class Period" means the period from August 4, 2019, to January 19, 2025. (Exh. 1, §1.12)

23 20. The "Net Settlement Amount" shall be the Gross Settlement Amount, less the
24 following payments in the amounts approved by the Court: Individual PAGA Payments, the
25 LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment,
26 Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Exh. 1,
27 §1.28) These amounts are detailed as follows:

- 28 • Class Counsel Fees Payment of not more than One Hundred Twenty Seven Thousand

Four Hundred Eighty-Nine Dollars and Zero Cents (\$127,489.00) and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00);

- Administration Expenses Payment of not more than Fourteen Thousand Four Hundred Ninety Dollars and Zero Cents (\$14,490.00);
- Class Representative Service Payment of not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff; and
- PAGA Penalties in the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) for civil penalties under PAGA, with 75% (\$30,000.00) paid to the LWDA for the LWDA PAGA Payment and 25% (\$10,000.00) paid to Aggrieved Employees for their Individual PAGA Payments.

21. The “Individual Class Payment” is each Class Member’s share of the Net Settlement Amount and will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period. The “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period. (Exh. 1, §1.23 and §1.24.)

22. Defendant will pay its employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount. (Exh. 1, §3.1)

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

24. Class Members will receive the Class Notice via first class mail (after the Settlement Administrator conducts a national change of address search). (Exh. 1, §7.4.2) If the Class Notice is returned as non-deliverable on or before the Response Deadline and a new address is obtained by way of a returned Class Notice, then the Settlement Administrator will promptly forward the original Class Notice to the updated address via first-class regular U.S. mail, indicating on the

1 original packet the date of such re-mailing. (Exh. 1, §7.4.3).

2 25. Class Members will have an opportunity to dispute the Workweeks and Pay Period
3 information provided in their Class Notice and produce evidence to support their contentions.
4 (Exh. 1, §7.6) The Settlement Administrator shall decide the dispute and must encourage the
5 Class Member disputing their credited workweeks to produce supporting documentation in order
6 to resolve the dispute. (Exh. 1, §7.6)

7 26. Class Members wishing to opt out from the Settlement Agreement must send a signed
8 written request for exclusion to the Settlement Administrator within 45 days from the initial
9 mailing of the Class Notice. (Exh. 1, §7.5.1.). Participating Class Members will also have the
10 opportunity to object to the Settlement Agreement by serving a copy of the objection to the
11 Settlement Administrator within 45 days after the mailing of the Class Notice (Exh. 1, §7.7.2.)

12 **THE STRENGTH OF PLAINTIFF’S CASE**

13 **IN LIGHT OF THE SETTLEMENT AMOUNT**

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

19 28. The strength of the plaintiff’s case in light of the settlement amount is deemed by
20 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
21 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
22 minimum wages and overtime, failed to provide proper meal or rest breaks or provide premium
23 pay in lieu thereof, failed to provide accurate wage statements, failed to reimburse necessary
24 business expenses, failed to pay sick pay, and failed to timely pay all wages upon termination in
25 violation of California law. Plaintiff seeks related violations of California’s Business &
26 Professions Code, and penalties pursuant to Labor Code § 2699 *et seq.* Plaintiff conducted
27 discovery and investigated each of the claims alleged. Specifically, Defendant produced the
28 following: (a) Defendant’s employee handbook in effect during the Class Period; (b) Defendant’s

1 policies and procedures pertaining to minimum wages, overtime, meal breaks, and rest breaks,
2 which were in effect during the Class Period; (c) Plaintiff's personnel file; (d) Plaintiff's
3 timekeeping and payroll records; (e) a sampling of the Class Members' timekeeping and payroll
4 records; and (f) information on the class demographics including the total number of Class
5 Members during the Class Period, total number of Class Members during the PAGA Period, total
6 number of current employees, total number of former employees in the relevant time period,
7 average hourly rate of pay, total number of workweeks worked during the Class Period, and the
8 total number of paychecks issued during the relevant time period. The merits of each of these
9 claims will be addressed separately below.

10 29. Based on the data provided, Class Counsel estimated Defendant's realistic exposure on
11 the primary claims in this case as follows: unpaid wages claim at \$58,926.63, meal period claim
12 at \$135,292.76, rest period claim at \$135,292.76, wage statement claim at \$194,880.00, waiting
13 time penalties at \$213,718.30, reimbursement of business claim at \$6,490.00, sick leave claim at
14 \$79,145.20, and on PAGA at \$99,385.00, for a total realistic exposure of **\$923,130.65**.

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

19 **Minimum Wages and Overtime**

20 31. Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
21 and overtime wages for all hours worked. Specifically, Plaintiff alleged that Class Members were
22 required to perform pre-shift and post-shift off the clock work which they were not compensated
23 for despite being subject to Defendant's control. For example, Plaintiff alleged that Class
24 Members were required to conduct COVID-19 related temperature checks by checking and
25 recording their temperature using a handheld thermometer. Prior to clocking in, Plaintiff alleged
26 that Class Members were required to greet clients, count medications and narcotics, and prepare
27 paperwork. Additionally, after clocking out, Plaintiff alleged that Class Members were required to
28 gather the trash and throw it out. Further, Plaintiff alleged that Defendant required Class

1 Members to complete online training courses when not at work, and would contact Class
2 Members on days they were not scheduled to work resulting in further off the clock work.
3 Moreover, Plaintiff alleged that Defendant had a consistent policy and practice of unlawfully
4 rounding hours worked to the nearest 15-minute or 30-minute increment and to the detriment of
5 Class Members. As a result, Plaintiff alleges Defendant consistently failed to pay all wages owed
6 to Class Members.

7 32. Defendant contended that it paid for all reported hours worked, that Class Members
8 were trained and required to record all hours worked, and that any off the clock work was
9 performed without Defendant's knowledge and de minimis. Defendant argued that given their
10 written policies and practices, any unrecorded hours were likely subject to individualized inquiry
11 and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel
12 necessarily applied a significant discount to damages based on this theory.

13 33. Class Counsel estimated Defendant's exposure on the unpaid wages claims to be
14 approximately \$294,633.16 (based on 5 minutes of off the clock work per shift and assuming
15 72.8% of off the clock hours attributable to overtime). However, given Defendant's defenses and
16 the potential hurdles facing certification of this claim, Class Counsel applied an 80% discount
17 making for an adjusted realistic exposure of \$58,926.63 for Defendant.

18 **Meal Periods and Rest Breaks**

19 34. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted
20 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th
21 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at
22 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
23 the entire period.”).

24 35. Plaintiff argued that Defendant had a common practice and policy of denying
25 compliant meal periods. Specifically, Plaintiff alleged that Class Members were regularly
26 required to perform work ordered by Defendant during their meal periods and were forced to
27 forego or shorten their meal periods based on the pressures they faced when performing their job
28 duties. Plaintiff alleged Defendant also often required Class Members to take their meal periods

1 after their fifth hour of work. For each meal period missed, of less than 30 minutes, or taken late
2 for which the employee was not provided a reasonable opportunity to take a complete and timely
3 meal period, an employer must pay the employee an additional one hour of compensation. Labor
4 Code § 226.7. This additional hour of compensation is referred to as “premium pay.” To comply
5 with these laws, every employer must keep, for each employee, accurate time records showing
6 when the employee begins and ends each work period and takes his or her meal periods. *See*
7 Wage Order 1-2001(7)(A)(3).

8 36. Defendant disagreed with Class Counsel’s interpretation of the law and facts.
9 Defendant contended that Class Members were given a reasonable opportunity to take their meal
10 periods, and in fact received their meal periods most of the time. Defendant argued it had a high
11 meal period compliance rate and provided premium pay for any non-compliant meal periods. If
12 Defendant’s contentions are proven true and prevail in trial, the likely outcome of this claim
13 would be no recovery for Class Members.

14 37. Class Counsel estimated Defendant’s exposure on the meal break claim at
15 approximately **\$676,463.83** (38,633 workweeks x 1 meal break violation per workweek x \$17.51
16 average hourly pay). However, Class Counsel believes this estimate is high given Defendants’
17 defenses and potential hurdles facing certification of this claim and thus provided an 80%
18 discount making Defendant’s adjusted realistic exposure \$135,292.76.

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

25 39. Defendant maintained that they did provide the reasonable opportunity for Class
26 Members to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest
27 breaks need not be recorded, so any rest break violations would likely be difficult to prove at trial.
28 Defendant disputes all allegations that breaks were not received. As these considerations would

1 likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and
2 appropriate discounts to the rest-break claim.

3 40. Class Counsel estimated Defendant's maximum total exposure on the rest break claim
4 at approximately \$676,463.83 (38,633 workweeks x 1 rest break violation per workweek x \$17.51
5 average hourly pay). However, Class Counsel believes this estimate is high given the difficulty of
6 proving rest break violations at trial and the potential hurdles facing certification of this claim
7 difficult to achieve, and thus applied an 80% discount making Defendant's realistic exposure
8 more likely to be \$135,292.76.

9 **Paystub Violations**

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

23 42. Defendant contends that Plaintiff's claim for further Labor Code § 226(e) penalties
24 would depend in large part on their underlying meal period and wage claims, and thus be subject
25 to the same defenses. Additionally, Defendant argues this claim has little or no value. *See*
26 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements
27 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
28 determined that employer did not properly pay all wages due). Defendant further contends that

1 Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or
2 she “suffered injury” from the employer’s failure to provide compliant wage statements, *see*
3 *Elliot v. Spherion Pacific Work, LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law)
4 (holding employee was not entitled to penalties because no injury was shown), and (2)
5 Defendant’s noncompliance was “knowing and intentional.” Finally, because the damages for this
6 cause of action are penalties, the statute of limitations only runs from one year prior to the filing
7 of the original complaint. *See* Cal. Civ. Pro. § 340.

8 43. Class Counsel estimated Defendant’s maximum total exposure on the section 226 claim
9 at approximately \$1,948,800.00 (\$50/\$100 x 19,877 pay periods). Class Counsel believes it may
10 be difficult to prevail on this claim because Class Members would need to show that they suffered
11 an injury and that Defendant’s noncompliance was knowing and intentional (on top of the
12 challenges described above with the underlying wage and break claims) which are both subject to
13 individualized issues making certification of this claim difficult to achieve. Thus, Class Counsel
14 provided a 90% discount making Defendant’s adjusted realistic exposure \$194,880.00.

15 **Failure to Pay Final Wages**

16 44. In failing to pay the California Class Members their minimum wages, overtime wages,
17 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,
18 Defendant willfully failed to pay these the California Class Members all wages due and certain at
19 the time of termination or within seventy-two (72) hours of resignation, as required under Labor
20 Code § 203.

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

27 46. Defendant argued that, under Labor Code § 203, employers are only obligated to pay
28 waiting-time penalties if they “willfully” fail to pay wages due and owing at the time of

1 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

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

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

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

12 47. Class Counsel estimated Defendant’s maximum total exposure on the section 203 claim
13 at approximately \$4,274,366.10 (1,030 terminated employees x 30 days x 7.9 hours per shift x
14 \$17.51 average rate of pay). Class Counsel believes it would be difficult to recover waiting time
15 penalties given that Plaintiff would need to show willfulness on top of proving the underlying
16 wage and break claims which are also potentially subject to individualized issues making
17 certification of this claim difficult to achieve. Thus, Class Counsel provided a 95% discount
18 making Defendant’s adjusted realistic exposure \$213,718.30.

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

20 48. Labor Code § 2802 provides that an employer must reimburse employees for all
21 necessary expenditures incurred in the performance of their job duties. Plaintiff worked for
22 Defendant and in the course of performing her job duties, incurred necessary business-related
23 expenses, including, cellular telephone expenses and non-slip shoes. Defendant maintained that
24 Plaintiff and Class Members were not required to use their personal cell phones and that the costs
25 of non-slip shoes were not reimbursable under the law.

26 49. Class Counsel estimated Defendant’s maximum total exposure for failing to reimburse
27 business expenses at approximately \$64,900.00 (\$50 x 1,298 employees). Class Counsel believes
28 it would be difficult to recover on this claim given Defendant’s defenses, and it would be difficult

1 to certify in light of all the preceding arguments. Thus, Class Counsel applied a 90% discount
2 making for an adjusted realistic exposure of \$6,490.00.

3 **Sick Time Pay**

4 50. Plaintiff also alleged that Defendant failed provide required California paid sick days
5 and further failed to distribute and maintain required documentation concerning how many sick
6 days were available in violation of California Labor Code § 246.

7 51. Defendant contended that it provided paid sick leave and at the proper regular rates
8 when applicable. Defendant further contended that any bonuses paid were discretionary in nature
9 and not required to be included in the regular rate at all.

10 52. Class Counsel estimated Defendant's maximum total exposure on the paid sick leave
11 claim at approximately \$791,452.00 (40-hour maximum PTO maximum accrual x \$17.51 average
12 rate of pay x 1,130 former employees = \$791,452.00). However, Class Counsel believes this
13 estimate is high given Defendant's defenses and potential hurdles facing certification of this claim
14 and thus provided a 90% discount making Defendant's realistic exposure \$79,145.20.

15 **PAGA Penalties**

16 53. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
17 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendant's
18 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
19 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
20 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
21 for each aggrieved employee per pay period for the initial violation and two hundred dollars
22 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
23 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
24 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
25 percent allocated to the affected employees. The limitations period as for all penalties is one year
26 prior to the filing of the complaint.

27 54. The provisions of the Labor Code potentially triggering PAGA penalties in this case
28 include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194,

1 Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA liability would
2 be huge because of the possibility of collecting multiple civil penalties for a single violation, and
3 thus such penalties would almost always dwarf the damages available under the causes of action
4 proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2)
5 states that "a court may award a lesser amount than the maximum civil penalty amount specified
6 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
7 result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See, e.g., Lopez v.*
8 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018), (recognizing
9 court's ability to reduce PAGA penalties). Courts have held that situations similar to the current
10 one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to
11 reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th
12 1112, 1134-1135 (2012) (holding that reduction was justified when employer "attempted to
13 comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S.
14 Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than
15 80% – from \$2.8 million to \$500,000 – when "employees suffered no injury" employers were
16 "not aware" of the violation and "took prompt steps to correct all violations once notified").
17 Defendant here maintained that it had a strong argument that it would be unjust to award
18 maximum PAGA penalties.

19 55. Furthermore, PAGA penalties are also derivative of each and every other claim, and
20 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
21 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
22 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
23 initial violations under the applicable statutes, because Defendant have never been notified of the
24 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
25 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
26 4th 1157, 1211-12. Therefore, if Labor Commissioner - on whose behalf Plaintiff is prosecuting
27 this action for civil penalties - would not impose civil penalties in a case like this, the Court may
28 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203

1 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil
2 penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because
3 "...a court may award a lesser amount than the maximum civil penalty amount specified by this
4 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
5 an award that is unjust, arbitrary and oppressive, or confiscatory."

6 56. Class Counsel estimated Defendant's maximum total exposure on the PAGA claim at
7 approximately \$1,987,700 (\$100 x 19,877 pay periods (no stacking)) However, Class Counsel
8 notes that owing to the discretionary nature of PAGA penalties and the foregoing case law it is
9 unlikely the Court would award the full penalty and that it would be substantially reduced to
10 something more like **\$99,385.00** if awarded a violation rate of \$5 per pay period. Class Counsel
11 applied discounts in light of the countervailing arguments with regard to the primary causes of
12 action, and moreover the Court's power to award "a lesser amount than the maximum civil
13 liability." The parties also considered that the purpose of PAGA is to "achieve maximum
14 compliance with state labor laws," *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th
15 348, 379. This makes the Settlement's proposed PAGA payment of \$40,000.00 appropriate.

16 **Unfair Business Practices**

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

21 **Summary**

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

27 59. Class Counsel had to apply appropriate discounts in light of the facts and law as
28 discussed above. Thus, this settlement, like most others, was the product of compromise. Because

1 of these and other risks, including the real and potential threat of Class Members recovering
2 nothing due to Defendant's distressed financial situation, a recovery of Three Hundred Eighty-Six
3 Thousand Three Hundred Thirty Dollars and Zero Cents (\$386,330.00) under the Settlement
4 Agreement is an excellent result. Under the Settlement, each of the approximately 1,298 Class
5 Members will receive, using a straight average and assuming they worked throughout the Class
6 Period, \$132.39 for their Individual Class Payment.

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

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

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

20 62. The parties disputed the effect of these and other issues on class certification and
21 decertification. Class Counsel maintained that there were several legal and factual questions at
22 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
23 the same policies and practices applied to all Class Members and therefore common questions
24 obtained and were likely to predominate over individual inquiries. Defendant disputed these
25 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
26 such as this one. Defendant also argued that its policies were compliant with the law, while
27 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
28 give rise to common questions amenable to certification. Thus, the parties had set positions on the

1 propriety of certifiability and liability that did not admit of an easy resolution.

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

18 **NOTICE TO AND REACTION OF CLASS MEMBERS**
19 **TO THE PROPOSED SETTLEMENT**

20 64. While premature to address this factor at the preliminary approval stage, some
21 observations are appropriate. First, the notification procedure set out in the Settlement Agreement
22 provides the greatest likelihood that each and every Class Member will receive the Notice of
23 Settlement ("Class Notice"), attached to the Settlement Agreement as **Exhibit A**. Under the
24 Settlement Agreement, the Settlement Administrator will send the Class Notice to each Class
25 Member via First Class U.S. mail. (Exh. 1, §7.4.2). Before mailing, the Settlement Administrator
26 will perform a skip trace search based on the National Change of Address Database for
27 information to update and correct for any known or identifiable address changes. (Exh. 1, §7.4.2)
28 If the Class Notice is returned as non-deliverable on or before the Response Deadline and a new

1 address is obtained by way of a returned Class Notice, then the Settlement Administrator will
2 forward the original Class Notice to the updated address via first-class regular U.S. mail, no later
3 than three (3) business days after the Administrator's receipt of any Class Notice returned as
4 undelivered. (Exh. 1, §7.4.3) Thus, most, if not all, Class Members will likely receive the Class
5 Notice.

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

11 66. If a Class Member disputes the number of workweeks stated for that Class Member in
12 the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter
13 by submitting in writing under penalty of perjury the workweeks that the Class Member claims to
14 have actually worked for Defendant during the Class Period. (Exh. 1, §7.6). After consultation
15 with Class Counsel and Defendant's Counsel, the Class Action Administrator will make a
16 determination of the Class Member's total workweeks during the applicable period. (*Id.*)

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

18 67. The foregoing discussion establishes the fairness of the class-action settlement in the
19 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
20 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
21 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
22 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
23 From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class
24 Counsel believes that this case could not have settled on better terms under the circumstances.
25 Request therefore is made that the settlement be granted preliminary approval so that those
26 persons whom it was intended to benefit shall be afforded the opportunity to determine its
27 adequacy.

28 **REQUEST FOR ATTORNEYS' FEES**

1 68. Under the Settlement, Class Counsel also requests, without opposition from Defendant,
2 an award of Attorneys Fees and Costs consisting of: One Hundred Twenty-Seven Thousand Four
3 Hundred Ninety-Eight Dollars and Zero Cents (\$127,498.00), in Attorneys' Fees and (2) not to
4 exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) for reimbursement of actual
5 reasonable litigation costs. (Exh. 1, §3.2.2). This request is fair, reasonable, and adequate to
6 compensate Class Counsel for the substantial work they have put into this case and, moreover, the
7 risk they assumed by taking it in the first place. The attorneys' fees award is intended to
8 reimburse Class Counsel for all uncompensated work that they have already done and for all the
9 work they will continue to do in carrying out and overseeing the notification to Class Members,
10 communicating with Class Members regarding their claims, and assisting in the administration of
11 the settlement if it is preliminarily approved. Defendant will not oppose Class Counsel's above
12 fees and cost request.

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

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

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

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

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

19 73. But Plaintiff did not allow her fear of the potential repercussions of being a class
20 representative deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
21 has been intimately involved in this case since its inception. She has devoted a substantial amount
22 of time to helping Class Counsel effectively develop and prosecute this action at every stage of
23 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class
24 Counsel on numerous occasions to discuss every aspect of her case. Plaintiff provided Class
25 Counsel with information about Defendant and about the industry generally, reviewed documents,
26 identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length,
27 participated in the mediation process, monitored the progress of the litigation with Class Counsel,
28 and reviewed and signed the Settlement Agreement.

1 74. Plaintiff has spent a significant amount of time with Class Counsel detailing her
2 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
3 action. She has diligently, adequately, and fairly represented Class Members, and has not placed
4 her interests above any member of the putative class. The payment to Plaintiff is intended to
5 recognize the time and effort devoted to bringing the lawsuit on behalf of the Class. The amount
6 requested is fair and appropriate based on their contribution and involvement. For example,
7 Plaintiff instigated the lawsuit by bringing these violations to the attention of Class Counsel. She
8 spent several hours answering questions and providing information to Class Counsel throughout
9 the pendency of this action. She identified witnesses, explained to Class Counsel day to day
10 business practices of Defendant with regard to work schedules and meal breaks, etc. The parties
11 are in agreement that Plaintiff is entitled to an enhancement for her time and efforts in this matter.
12 This sort of payment to a class representative has been a common feature of settlements
13 negotiated by Class Counsel and has been routinely approved by trial courts.

14 75. In light of the foregoing, Class Counsel believes that the Class Representative Service
15 payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
16 the Class Representative is fair and reasonable.

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

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

26 a. Numerosity. The putative class is so numerous that joinder of all members is
27 impractical. Class Members are "all current and former employees within the State of California
28 who, at any time from August 4, 2019, to January 19, 2025, are or were employed as non-exempt

1 hourly employees by Defendant.” There are approximately 1,298 persons answering to this
2 definition. Thus, there are a sufficient number of Class Members to warrant certifying this as a
3 class action for settlement purposes.

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

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

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

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

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

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

13 e. Commonality. Common questions of law or fact in this case predominate over
14 individual questions. This action involves, *inter alia*, a determination about Defendant’s alleged
15 failure to provide meal period and rest periods, failure to pay wages and overtime due to allegedly
16 common and unlawful policies, failure to provide accurate wage statements, failure to reimburse
17 business expenses, failure to pay sick pay, failure to pay final wages when required, and largely
18 derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these
19 practices affected Class Members in the same way. Plaintiff contends these practices, including
20 an alleged practice of failing to provide complete meal periods, related meal period policies
21 applicable to the class, and the alleged failure to provide corresponding premium payments, that
22 affected class members in the same way. All class members were employed during the Class
23 Period. Therefore, the operative complaint delineates a common course of conduct applicable to
24 all Class Members.

25 f. Predominance. Individualized issues do not predominate over the issues of law and
26 fact that are common to the class as a whole. The principal issues of controversy are whether
27 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
28 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were

1 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
2 Class Members seek meal and rest break premiums, unpaid wages and overtime, unpaid sick pay,
3 unreimbursed business expenses, and penalties for work performed as non-exempt employees for
4 Defendant. These issues are suitable for common adjudication because all Class Members were
5 subject to the same employment policies and Plaintiff contends the practices applied uniformly to
6 all Class Members.

7 g. Superiority. Class resolution is superior to other available methods for the fair and
8 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
9 individually control the prosecution of separate actions. Although the injury resulting from
10 Defendant's policies and practices are real and significant, the cost of individually litigating each
11 such case against Defendant would easily exceed the value of any relief that could be obtained by
12 any one Class Member individually. If Class Members are forced to litigate their claims
13 individually this would result in about 1,298 individual actions against Defendant. Here, the
14 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
15 individual suit would prove uneconomical for a potential plaintiff because litigation costs would
16 dwarf a potential recovery.

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

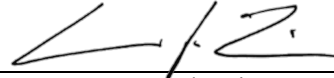
21 i. There are no serious manageability difficulties presented by preliminarily
22 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
23 that would remain is settlement administration and responding to possible objectors.

24 77. On April 17, 2025, Plaintiff submitted the Class Action and PAGA Settlement
25 Agreement and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA
26 Settlement and supporting documents to the LWDA. A true and correct copy of the confirmatory
27 email from the LWDA is attached hereto as Exhibit 3.

28 I declare under penalty of perjury under the laws of the State of California that the

1 foregoing is true and correct.

2 Executed this 17th day of April, at Glendale, California.

3
4 

Enoch Kim

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND NOTICE

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Venita Ball, on behalf of herself and others similarly situated and other allegedly aggrieved employees (“Plaintiff”) and Defendant Advance Nursing Services, Inc. (“Defendant”) (collectively, the “Parties” and individually as “Party”).

I. DEFINITIONS

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Venita Ball v. Advance Nursing Services, Inc.*, initiated on August 4, 2023, and pending in the Superior Court of the State of California, County of Los Angeles, Case No. 23STCV18600.
- 1.2. “Administrator” means Apex Class Action (“Apex”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expense Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all current and former employees within the State of California who, at any time from August 4, 2022, to January 19, 2025, are or were employed as non-exempt hourly employees by Defendants.
- 1.5. “Class” means all current and former employees within the State of California who, at any time from August 4, 2019, to January 19, 2025, are or were employed as non-exempt hourly employees by Defendant.
- 1.6. “Class Counsel” means Emil Davtyan, David Yeremian, Natalie Haritounian, Enoch Kim, Matthew Carraher, and Antonia McKee of D. Law, Inc.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variations, attached as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from August 4, 2019, to January 19, 2025.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “Defendant” means Advance Nursing Services, Inc.
- 1.17. “Defense Counsel” means Marie DiSante, Carolina Schwalbach, and John Keeney of CDF Labor Law, LLP.
- 1.18. “Effective Date” means the date of the latest of (a) entry of an order by the Court granting final approval of the Settlement; or (b) if there are objections to the Settlement which are not withdrawn, and if an appeal, review or writ is not sought from the Final Approval Order and Judgment, the sixty first (61st) day after the service of notice of entry of Judgment; or (c) if there is an appeal, review or writ, the dismissal or denial of the appeal, review or writ, if the Judgment is no longer subject to further judicial review.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means Three Hundred Eighty-Six Thousand Three Hundred Thirty Dollars and Zero Cents (\$386,330.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under the Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved employee worked for Defendant for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from August 4, 2022, to January 19, 2025
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.)
- 1.33. "PAGA Notice" means Plaintiff's letter dated August 4, 2023, to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to the LWDA in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Venita Ball, the named Plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

- 1.41. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.43. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.44. “Workweek” means any week during which a class member worked for Defendant for at least one day, during the Class Period.

II. RECITALS

- 2.1. On August 4, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Itemized Wage Statements; (6) Waiting Time Penalties; (7) Failure to Timely Pay Wages; (8) Failure to Keep Payroll Records; (9) Failure to Reimburse Business Expenses; (10) Failure to Provide One Day’s Rest; (11) Failure to Pay Sick Leave; (12) Failure to Produce Employment Records; and (13) Violation of UCL. On October 6, 2023, Plaintiff filed a First Amended Complaint alleging an additional cause of action under PAGA. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint” or “FAC”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with any applicable laws, and denies any and all liability for the causes of action alleged.

In her Complaint, Plaintiff also asserted claims against LA Family Housing, LLC *dba* The Arroyo Women’s Shelter (“Arroyo”). Arroyo was never served with the Complaint, and Plaintiff was informed that Arroyo never employed Plaintiff.

- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), on August 4, 2023, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice, LWDA Case Number LWDA-CM-973018-23.
- 2.3. On July 16, 2024, and November 20, 2024, the Parties participated in mediation with Brandon McKelvey which resulted in this Agreement to settle the Action.
- 2.4. Prior to the mediation, Plaintiff obtained through informal discovery, Plaintiff’s personnel file, employee handbooks, a 10% blind sample of time and pay records of potential Class Members, exemplar wage statements, financial documents, and data pertaining to the alleged claims in the Operative Complaint during the Class Period and PAGA Period.

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

III. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay Three Hundred Eighty-Six Thousand Three Hundred Thirty Dollars and Zero Cents (\$386,330.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will dispute the entire Gross Settlement Amount without asking or requiring Participating Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payment from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment of less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
 - 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be One Hundred Twenty Seven Thousand Four Hundred Eighty-Nine Dollars and Zero Cents (\$127,489.00) and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the

amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and shall hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any division or sharing of these Payments.

- 3.2.2.1. In the event that the Court reduces or does not approve the requested Class Counsel Fees Payment and/or Class Litigation Expenses Payment, Class Counsel reserve their right to appeal such order; however, Plaintiff and/or Class Counsel will not request or demand an increase to the Gross Settlement Amount on that basis.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Fourteen Thousand Four Hundred Ninety Dollars and Zero Cents (\$14,490.00) except for a showing of good cause and as approved by the Court. To the extent the Administrative Expenses are less, or the Court approves payment less than \$14,490.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Workweeks.
 - 3.2.4.1. Tax Allocation of Individual Class Payments: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Forty Thousand Dollars and Zero Cents (\$40,000.00) to be paid from the Gross Settlement Amount, with 75% (\$30,000.00) allocated to the LWDA PAGA Payment and 25% (\$10,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

IV. SETTLEMENT FUNDING AND PAYMENTS

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 1,298 Class Members who collectively worked a total of 38,633 Workweeks during the Class Period, and 820 Aggrieved Employees who worked a total of 15,303 PAGA Pay Periods during the PAGA Period.
- 4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after the Effective Date, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses

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

- 4.4.1. The Administrator will issue checks for the Individual Class Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- V. **RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Class Members will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences arising out of Plaintiff's employment that occurred prior to the date of execution of this agreement, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2. Release by Participating Class Members:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were pled, or reasonably could have been pled based on the facts alleged in the Operative Complaint against Defendant that accrued during the Class Period (the "Released Class Claims"). Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties or other remedies recoverable under Labor Code Section 2698, *et seq.* ("PAGA"), which were pled, or could have been pled based on the facts alleged in the PAGA Notice, against Defendant that accrued during the PAGA Period (the "Released PAGA Claims"). The Released PAGA Claims include a release of civil penalties, attorneys' fees and costs.

Dismissal of Claims Against Defendant Arroyo. Upon execution by all Parties and their counsel of this Agreement, Plaintiff shall file a dismissal without prejudice as to the claims made against Defendant Arroyo.

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

6.1 Responsibilities of the Parties. The Parties, by and through their respective Counsel, are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 court days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Plaintiff is responsible for delivering the Court’s Preliminary Approval Order to the Administrator. Plaintiff shall prepare the initial draft of the Motion for Preliminary Approval and send to Defense Counsel no later than seven (7) days before the deadline to file.

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

VII. SETTLEMENT ADMINISTRATION

7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action to serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4 Notice to Class Members.

- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defense Counsel, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

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

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

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail, and must provide any supporting documentation to the Administrator. The Administrator must encourage the challenging

Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct as long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

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

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

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

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

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

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

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

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Plaintiff is responsible for filing the Administrator’s declaration in Court.

VIII. CLASS SIZE ESTIMATE and ESCALATOR CLAUSE. Based on its records to date of this Settlement Agreement, Defendant estimates that, (1) there are 1,298 Class Members and 38,633 Total Workweeks during the Class Period, and (2) there were 820 Aggrieved Employees who worked 15,303 PAGA Pay Periods during the PAGA Period. The Workweek Value shall be calculated by dividing the Gross Settlement Amount by 38,633 workweeks. The Parties agree that the Workweek Value amounts to \$10 per workweek. Workweeks shall be calculated using Class Members' hire dates, termination dates, and re-hire dates (as applicable). At Defendant's sole discretion, if the number of Total Workweeks during the Class Period exceeds 38,633 by more than 10%, Defendant has the option of either, increasing the Gross Settlement Amount pro rata per additional Workweek by the Workweek Value, or backing the release date up to where the workweeks are 10% or less and not increasing the Gross Settlement Amount.

IX. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant shall have the right, but not the obligation, exercised in Defendant's sole discretion, to cancel the Settlement and render it null and void. The Parties agree not to encourage any Settlement Class Member or Aggrieved Employee to attempt to object to or opt out of the Settlement. Shall Defendant elect to exercise this option, Defendant shall be responsible for any settlement administration costs incurred.

X. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval").

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

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

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement

solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. In the event any Party is forced to seek judicial intervention to enforce the rights or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs, including expert witness fees in connection with any enforcement actions.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If, after a notice of appeal or a petition for a writ of certiorari or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a material modification to the Settlement and Agreement (including, but not limited to, the scope of release to be granted by Class Members), and that court's decision is not completely reversed and the Final Order is not fully affirmed on review by a higher court, then Named Plaintiff and Defendant will each have the right to void the Settlement and Agreement, which the Parties must do by giving written notice to the other Parties, the reviewing court, and the Court not later than fourteen (14) calendar days after the reviewing court's decision vacating, reversing, or materially modifying the Final Order becomes final. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional administration expenses reasonably incurred after remitter. A vacation, reversal, or modification of the Court's award of an Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal, or material modification of the Final Order within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged and provided that Defendant's obligation to make payments remains limited as set forth in this Agreement.

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

XII. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an

admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserve the right to contest certification of any class for any reasons, and Defendant reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.4. Attorney Authorization. The Parties separately warrant and represent that they have authorized their respective Counsel to take all appropriate action required or permitted to be taken pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.5. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.6. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 12.7. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.8. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.9. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.10. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.11. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.12. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.15. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: D Law, Inc.

Emil Davtyan
David Yeremian
Natalie Haritounian
Enoch Kim
Matthew J. Carraher
Antonia McKee

emil@d.law
d.yeremian@d.law
n.haritonian@d.law
e.kim@d.law
m.carraher@d.law
a.bliznets@d.law
450 N. Brand Blvd., Suite 840
Glendale, California 91203

To Defendant: CDF Labor Law, LLP

Marie D. DiSante
Carolina A. Schwalbach
John S. Keeney
mdisante@cdfsaborlaw.com
cschwalbach@cdfsaborlaw.com
jkeeney@cdfsaborlaw.com
18300 Von Karman Avenue, Suite 800
Irvine, California 92612
(949) 622-1661

- 12.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically, (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterparts will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

APPROVED:

Date: 4/15/2025

PLAINTIFF VENITA BALL

DocuSigned by:
Venita Ball
9BABFDC79CA34C6...

VENITA BALL

Date: 4/16/2025

**DEFENDANT ADVANCE NURSING
SERVICES, INC.**

DocuSigned by:
Katrina Holliday
1079F4FBE6064A4...

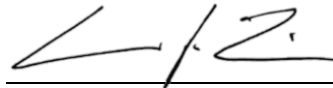
By: Katrina Holliday

Title: CEO

APPROVED AS TO FORM:

Date: 4/15/25

D. LAW, INC.



Emil Davtyan
David Yeremian
Natalie Haritounian
Enoch Kim
Matthew J. Caraher
Antonia McKee
Attorneys for Plaintiff

Date: 04/17/2025

CDF LABOR LAW, LLP



Marie D. DiSante
Carolina S. Schwalbach
John S. Keeney
Attorneys for Defendant

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

VENITA BALL V. ADVANCE NURSING SERVICES, INC. | Case No. 23STCV18600

The Superior Court for the State of California 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 an employee class action lawsuit (“Action”) entitled *Venita Ball v. Advance Nursing Services, Inc.*, for alleged wage and hour violations. The Action was filed by a former employee (“Plaintiff”) of Advance Nursing Services, Inc. and seeks payment of (1) back wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Advance Nursing Services, Inc. during the Class Period from August 4, 2019 to January 19, 2025 and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Advance Nursing Services, Inc. during the PAGA Period from August 4, 2022 to January 19, 2025 (“Aggrieved Employees”). For the purposes of this Notice, Advance Nursing Services, Inc. shall be referred to here as the “Company.”

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

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

The above estimates are based on the Company’s records showing that **you worked [REDACTED] workweeks** during the Class Period and **you worked [REDACTED] pay periods** during the PAGA Period. If you believe that you worked more workweeks or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or 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 the Company to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against the Company.

If you worked for the Company during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against the Company.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against the Company, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

The Company will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against the Company that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is 	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. The Company must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [REDACTED]	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [REDACTED] Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on [REDACTED]. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [REDACTED]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to the Company’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of the Company. The Action accuses the Company of violating California labor laws by failing to (1) Pay Minimum Wages; (2) Pay Overtime Wages; (3) Provide Meal Periods; (4) Provide Rest Periods; (5) Provide Itemized Wage Statements; (6) Pay Waiting Time Penalties; (7) Timely Pay Wages; (8) Keep Payroll Records; (9) Reimburse Business Expenses; (10) Provide One Day’s Rest; (11) Pay Sick Leave; (12) Produce Employment Records; and (13) Violation of California’s Unfair Competition Law. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”).

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

So far, the Court has made no determination whether the Company or Plaintiff is correct on the merits. In the meantime, Plaintiff and the Company hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to

jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and the Company 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, the Company does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel believe the Settlement is a good deal for you because they believe that: (1) the Company 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. 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?

- a. The Company Will Pay \$386,330.00 as the Gross Settlement Amount (Gross Settlement). The Company has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, the Company will fund the Gross Settlement not more than 14 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 Participating Class Members object to the proposed Settlement or the Judgment is appealed.
- b. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - i. Up to \$127,498.00 (One-Third of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - ii. Up to \$7,500.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - iii. Up to \$14,490.00 to the Administrator for services administering the Settlement.

- iv. Up to \$40,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

- c. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- d. Taxes Owed on Payments to Class Members. The Settlement shall be broken down as follows: 20% (“Wage Portion”) of each Individual Class Payment to taxable wages and 80% (“Non-Wage Portion”) to penalties and interest. The Wage Portion is subject to withholding and will be reported on IRS W-2 Forms. The Company will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and the Company 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.

- e. 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 Controller's Unclaimed Property Fund in your name. If the monies represented by your check are sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
- f. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting

forth the Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against the Company.

- g. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against the Company based on the PAGA Period facts alleged in the Action.
- h. 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 enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and the Company have agreed that, in either case, the Settlement will be void: the Company will not pay any money and Class Members will not release any claims against the Company.
- i. Administrator. The Court has appointed a neutral company, Apex Class Action Administration (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks and Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- j. Participating Class Members' Release. After the Judgment is final and the Company has fully funded the Gross Settlement 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 the Company or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were pled, or reasonably could have been pled based on the same or similar facts alleged in the Operative Complaint against Defendant that accrued during the Class Period (the "Released Class Claims"). Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair

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

- k. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and the Company has fully funded the Gross Settlement and separately paid all employer payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against the Company, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against the Company or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties or other remedies recoverable under Labor Code Section 2698, *et seq.* ("PAGA"), which were pled, or could have been pled based on the facts alleged in the PAGA Notice, against Defendant that accrued during the PAGA Period (the "Released PAGA Claims"). The Released PAGA Claims include a release of civil penalties, attorneys' fees and costs.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- a. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
- b. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
- c. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of Pay Periods you worked during the PAGA Period, as recorded in the Company's records, are stated on the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge

by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept the Company's calculation of Workweeks and/or Pay Periods based on the Company's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and the Company's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

- a. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
- b. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Venita Ball v. Advance Nursing Services, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and the Company are asking the Court to approve. At least 16 court days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other

things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [REDACTED] or the Court's website [REDACTED].

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is [REDACTED]. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Venita Ball v. Advance Nursing Services, Inc* and include your name, current address, telephone number, and approximate dates of employment for the Company and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] in Department 11 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comments from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website ([REDACTED]) beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything the Company and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at [REDACTED]. You can also telephone or send an email to the Administrator using the contact information listed below or consult the Superior Court website by going to <http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the

Action, Case No. 23STCV18600. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN
INFORMATION ABOUT THE SETTLEMENT.**

The Contact information for the Settlement Administrator is as follows:

Email Address:

Mailing

Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the 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 Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

**DAVID YEREMIAN
& ASSOCIATES INC**

2540 Foothill BLVD STE 201
La Crescenta CA 91214

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM

August 4, 2023

VIA ON-LINE SUBMISSION ONLY TO:

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

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

Oraceil Irvin, Agent for Service
Advance Nursing Services, Inc.
17420 S. Avalon Blvd., Unit 101
Carson, CA 90746
Certified Mail Tracking Number: 9589 0710 5270 0604 4211 54

The Arroyo – Women’s Shelter
12860 Arroyo St.
Sylmar, CA 91342
Certified Mail Tracking Number: 9589 0710 5270 0604 4212 08

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
Venita Ball v. Advance Nursing Services, Inc., et al.
Superior Court for the County of Los Angeles**

Gentlepersons:

This office represents Plaintiff Venita Ball (“Plaintiff”) and other similarly situated aggrieved non-exempt, hourly employees aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

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

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

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

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee based out of Defendants' location in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees." Aggrieved Employees consistently worked at Defendants' behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, failing to reimburse for necessary business expenses, failing to provide one day's rest in seven, and failing to provide required paid sick days all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Specifically, prior to clocking in, Aggrieved Employees were required to conduct COVID-19 related temperature checks by checking and recording their temperature using a handheld thermometer. Additionally, prior to clocking in, Aggrieved Employees were required to greet clients, count medications and narcotics, and prepare paperwork. Further, after clocking out, Aggrieved Employees were required to gather the trash and throw it out. Additionally, Defendants would contact Aggrieved Employees on days they were not scheduled to work resulting in further off the clock work.

Moreover, Defendants required Aggrieved Employees to complete online training courses but failed to pay them for this time resulting in further off the clock work.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30-minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks and this resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break. Additionally, to the extent Aggrieved Employees attempted to take a break, they were prohibited from leaving the premises.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be

evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Defendants failed to pay Plaintiff for all wages due and certain at the time of termination in compliance with Labor Code §§ 201-203. Instead, Defendants never gave Plaintiff her final check. Upon information and belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well. Additionally, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, and unlawfully rounded time entries to the detriment of Aggrieved Employees. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of

performing her required job duties for Defendants including for cell phone expenses and for her uniform which consisted of scrubs with distinctive colors and non-slip shoes. Plaintiff was required to use her personal cell phone to communicate with co-workers and management regarding work related matters. Defendants also failed to pay for uniform maintenance. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

Furthermore, Defendants caused Aggrieved Employees to go without a day of rest when they required Aggrieved Employees to forego rest to which Aggrieved Employees were entitled to by scheduling or directing Aggrieved Employees to involuntarily work seven days in a row in each workweek without a day of rest. Aggrieved Employees worked more than six (6) hours of work during each shift.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who “works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246.

PAGA Claim Details, Legal Bases for Violations and Penalties:

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

Failure to Pay Minimum Wages

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

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to

employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

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

During the course of Aggrieved Employees’ employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants’ control. Specifically, prior to clocking in, Aggrieved Employees were required to conduct COVID-19 related temperature checks by checking and recording their temperature using a handheld thermometer. Additionally, prior to clocking in, Aggrieved Employees were required to greet clients, count medications and narcotics, and prepare paperwork. Further, after clocking out, Aggrieved Employees were required to gather the trash and throw it out. Additionally, Defendants would contact Aggrieved Employees on days they were not scheduled to work resulting in further off the clock work. Moreover, Defendants required Aggrieved Employees to complete online training courses but failed to pay them for this time resulting in further off the clock work.

Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California

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

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

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

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

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for

correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

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

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

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

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

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Additionally, to the extent Aggrieved Employees attempted to take a break, they were prohibited from leaving the premises. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

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

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

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

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

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

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

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

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

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

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

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

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

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

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

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the foregoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of

their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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

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

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work related expenses they incurred. Defendants required Plaintiff to incur business expenses in the course of performing her required job duties for Defendants including for cell phone expenses and for her uniform which consisted of scrubs with distinctive colors and non-slip shoes. Plaintiff was required to use her personal cell phone to communicate with co-workers and management regarding work related matters. Defendants also failed to pay for uniform maintenance. Upon information and belief, Aggrieved Employees incurred similar costs.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide One Day's Rest in Seven

California Labor Code § 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code § 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. Moreover, California Labor Code § 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, Defendants sometimes scheduled Aggrieved Employees to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. Because Aggrieved Employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest

requirement. To the extent that Employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558.

Failure to Provide Required California Paid Sick Days
(Cal. Labor Code §§ 246, 247.5, 248.5, 2699 *et seq.*)

Plaintiff and Aggrieved Employees alleges that Defendant failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. Plaintiff now seeks damages pursuant to §§248.5 and 2699 *et seq.*

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

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

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

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

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802, including as follows:

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

(b) **Meal and Rest Period Claims:** For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,

558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

(f) Day's Rest in Seven: For Defendants' failure to provide one day's rest in seven under Labor Code §§ 551 and 552, and Sections 3 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 551, 552, and 558, and 2699(f)(2) and paragraph 3 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Provide Paid Sick Days: For Defendants' failure to provide Class Members with all their required and earned sick days in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(h) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under

Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

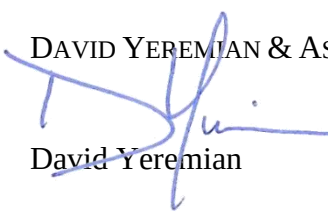
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case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

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

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

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Advance Nursing Services, Inc. and The Arroyo – Women's Shelter by Certified Mail

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Attorneys for Plaintiff VENITA BALL,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

VENITA BALL, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

ADVANCE NURSING SERVICES, INC., a
California corporation; THE ARROYO –
WOMEN’S SHELTER, a business entity of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Reimburse Necessary Business Expenses § 2802;
10. Failure to Provide One Day’s Rest in Seen under Labor Code §§ 551 and 552;
11. Violation of Labor Code § 246;
12. Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5; and
13. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff VENITA BALL (“Plaintiff”) brings this action on behalf of himself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendants ADVANCE NURSING SERVICES, INC, a California corporation, THE ARROYO – WOMEN’S SHELTER, a business entity of unknown form; and DOES 1 through 50” (all defendants being collectively referred to herein as “Defendants”).

2. Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the California Business & Professions Code, and seeks redress for these violations.

3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar violations at the hands of Defendants as the other Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff VENITA BALL resides in California, during the time period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant ADVANCE NURSING SERVICES, INC. is a California corporation and is registered with the California Secretary of State. Defendant ADVANCE NURSING SERVICES, INC. has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

6. Defendant THE ARROYO – WOMEN’S SHELTER is a business entity of unknown form and has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants.

7. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Class Members. Defendants, and each of them, exercised control over the wages, hours or working conditions of Class Members, or suffered or permitted Class Members to work, or engaged, thereby creating a common law employment relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly employed Class Members.

9. Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

10. Whenever and wherever reference is made to individuals who are not named as a Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to

1 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
2 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
3 the obligations and liabilities giving rise to this lawsuit occurred in part in Los Angeles County.
4 Defendants maintain and operate facilities in Los Angeles County and employs Plaintiff and other
5 Class Members in Los Angeles County, while doing business throughout California.

6 **FACTUAL BACKGROUND**

7 12. Class Members consistently worked at Defendants behest without being paid all
8 wages due. Class Members were either not paid by Defendants for all hours worked or were not
9 paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that
10 Defendants failed to pay Class Members all wages due and owing, including by requiring off the
11 clock work, unlawfully rounding to their detriment, failing to provide meal and rest breaks, failing
12 to furnish accurate wage statements, failing to timely pay wages including final wages, failing to
13 maintain accurate records, failing to reimburse necessary business expenses, failing to provide one
14 day's rest in seven, and failing to provide required paid sick days all in violation of various
15 provisions of the California Labor Code and applicable Wage Orders.

16 13. During the course of Class Members' employment with Defendants, they were not
17 paid all wages they were owed, including for all work performed resulting in off the clock work.
18 Class Members were required to perform pre-shift and post-shift off the clock work which they
19 were not compensated for despite being subject to Defendants' control. Specifically, prior to
20 clocking in, Class Members were required to conduct COVID-19 related temperature checks by
21 checking and recording their temperature using a handheld thermometer. Additionally, prior to
22 clocking in, Class Members were required to greet clients, count medications and narcotics, and
23 prepare paperwork. Further, after clocking out, Class Members were required to gather the trash
24 and throw it out. Additionally, Defendants would contact Class Members on days they were not
25 scheduled to work resulting in further off the clock work. Moreover, Defendants required Class
26 Members to complete online training courses but failed to pay them for this time resulting in
27 further off the clock work.

28 14. Moreover, Defendants had a consistent policy and practice of unlawfully rounding

1 hours worked to the detriment of the Class Members. Rather than paying Class Members for all
2 hours and minutes they actually worked, Defendants followed a uniform policy and practice of
3 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or
4 30-minute time increment), and generally did so to the detriment of the Class Members, and
5 Plaintiff contend this policy is not neutral and resulted, over time, to the detriment of the Class
6 Members by systematically under-compensating them. Rather than reflecting the actual hours
7 worked by Class Members, the time entries were rounded and reduced to reflect the scheduled
8 work time rather than the actual hours worked. These unlawfully rounded time entries were
9 inputted into Defendants' payroll system from which wage statements and payroll checks were
10 created.

11 15. By implementing policies, programs, practices, procedures and protocols which
12 resulted in off the clock work and also rounded the hours worked by Class Members down to their
13 detriment and systematically failed to pay for all hours worked, Defendants' willful actions
14 resulted in the systematic underpayment of wages to Class Members, including underpayment of
15 overtime pay to Class Members over the relevant time period. For example, the above described
16 off the clock work addressed above caused Plaintiff to begin receiving overtime pay later than
17 they should have.

18 16. As a result of the above described requirements to work off the clock, unlawful
19 rounding by Defendants and the other wage violations they endured at Defendants' hands, Class
20 Members were not properly paid all wages earned and all wages owed to them by Defendants,
21 including when working more than eight (8) hours in any given day and/or more than forty (40)
22 hours in any given week.

23 17. As a result of Defendants' unlawful policies and practices, Class Members incurred
24 overtime hours worked for which they were not adequately and completely compensated, in
25 addition to the hours they were required to work off the clock. To the extent applicable,
26 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
27 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
28 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work

1 day, as required under the Labor Code and applicable IWC Wage Orders.

2 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
4 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
5 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
6 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
7 Orders as the actual times when Class Members were under the control and direction of
8 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
9 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
10 including underpayment of overtime pay to Class Members over a period of time.

11 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
12 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
13 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
14 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
15 Class Members their true and correct overtime compensation at premium overtime rates for all
16 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
17 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
18 and the corresponding sections of IWC Wage Orders.

19 20. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
20 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
21 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
22 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
23 without receiving a lawful and timely meal break. In addition to untimely meal periods,
24 Defendants also required Class Members to respond to work demands. Defendants placed their
25 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
26 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
27 ones, because the demands of the job would not avail them the opportunity to take a lawfully
28 uninterrupted and off duty meal and/or rest break. Additionally, to the extent Class Members

1 attempted to take a break, they were prohibited from leaving the premises.

2 21. On the occasions when Class Members worked over 10 hours in a shift, Defendants
3 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
4 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
5 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
6 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
7 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
8 each meal period or rest break that Defendants failed to provide or deficiently provided.

9 22. Therefore, for at least four years prior to the filing of this action and through to the
10 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
11 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
12 and shifts in excess of (10) hours without providing them with second meal periods of not less
13 than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of
14 wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
15 failed to provide or deficiently provided.

16 23. Meal period violations thus occurred in one or more of the following manners:

- 17 (a) Class Members were not provided full thirty-minute duty free meal periods
18 for work days in excess of five (5) hours and were not compensated one (1)
19 hour's wages in lieu thereof, all in violation of, among others, Labor Code
20 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
21 Order(s);
- 22 (b) Class Members were not provided second full thirty-minute duty free meal
23 periods for work days in excess of ten (10) hours;
- 24 (c) Class Members were required to work through at least part of their daily
25 meal period(s);
- 26 (d) Meal periods were provided after five (5) hours of continuous work during
27 a shift; and
- 28 (e) Class Members were restricted in their ability to take a full thirty-minute

meal period.

24. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Class Members with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

25. Rest period violations therefore arose in one or more of the following manners:

- (a) Class Members were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- (b) Class Members were not authorized and permitted to take timely rest periods for every four hours worked, or major fraction thereof; and
- (c) Class Members were required to remain on-duty during rest periods or otherwise had their rest periods interrupted by work demands.

26. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Class Members and their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

27. From at least four (4) years prior to filing this lawsuit and continuing to the present,

1 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
2 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
3 required by California wage-and-hour laws. Specifically, Defendants failed to pay Plaintiff for all
4 wages due and certain at the time of termination in compliance with Labor Code §§ 201-203.
5 Instead, Defendants never gave Plaintiff her final check. Upon information and belief, Defendants
6 implemented the same policy and procedure for Class Members as well. Additionally, Class
7 Members were not paid all regular and overtime wages because Defendants failed to pay for all
8 hours worked, required off the clock work and unlawfully rounded time entries to the detriment of
9 Class Members. Additionally, Defendants failed to pay premium wages owed for unprovided meal
10 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
11 wages within the required time was willful within the meaning of Labor Code § 203.

12 28. Additionally, from at least four (4) years prior to the filing of this lawsuit and
13 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses
14 in the course of performing her required job duties for Defendants including for cell phone
15 expenses and for her uniform which consisted of scrubs with distinctive colors and non-slip shoes.
16 Plaintiff was required to use her personal cell phone to communicate with co-workers and
17 management regarding work related matters. Defendants also failed to pay for uniform
18 maintenance. Upon information and belief, Class Members incurred similar costs. These expenses
19 incurred by Plaintiff and Class Members were necessary and required of them in performing their
20 assigned job duties, but Defendants failed to reimburse Plaintiff and Class Members for all such
21 necessary expenditures, thus entitling them to reimbursement according to proof as required under
22 Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

23 29. Moreover, from at least four (4) years prior to the filing of this lawsuit and
24 continuing to the present, Defendants knew or should have known that employees were entitled to
25 one day's rest in seven. In violation of the California Labor Code, Defendants required Class
26 Members to work more than six consecutive days without a day of rest, where the total hours
27 worked exceeded 30 hours in any week or six hours in any one day thereof.

28 30. Defendants also violated California Labor Code § 246 by not providing all required

1 paid sick days to Plaintiff and the Class members. Labor Code § 246 provides that an Employee
2 who “works in California for the same employer for 30 or more days within a year from the
3 commencement of employment is entitled to paid sick days as specified in this section.”
4 Defendants failed to provide Plaintiffs and the other similarly Class Members with all their
5 required and earned sick days, in violation of Labor Code § 246.

6 31. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
7 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 551, 552,
8 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2802 and
9 California Code of Regulations, Title 8, section 11000 *et seq.*

10 32. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
11 and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits
12 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
13 fraudulent practices alleged in this Complaint.

14 **CLASS ALLEGATIONS**

15 33. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

16 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not
17 compensated for all hours worked for Defendants at the applicable minimum wage.

18 b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not
19 compensated for all hours worked for Defendants at the required rates of pay, including for all
20 hours worked in excess of eight in a day and/or forty in a week.

21 c. Subclass 3. Meal Period Subclass. All Class Members who were subject to
22 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
23 free meal periods or one hour of pay at the Class Member’s regular rate of pay in lieu thereof.

24 d. Subclass 4. Rest Break Subclass. All Class Members who were subject to
25 Defendants’ policy and/or practice of failing to authorize and permit Class Members to take
26 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
27 thereof, and failing to pay one hour of pay at the Class Member’s regular rate of pay in lieu
28 thereof.

e. Subclass 5. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

g. Subclass 7: Failure to Timely Pay Wages Twice Monthly Subclass. All Class Members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 10. Failure to Provide One Day of Rest in Seven. All Class Members who were subject to Defendants policy of scheduling Class Members to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek.

k. Subclass 9. Sick Days Subclass. All Class Members who, within the applicable limitations period, were not paid for their sick days.

l. Subclass 11. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

34. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

35. Defendants, as a matter of company policy, practice and procedure, and in violation

of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for the time worked by Class Members, even though Defendants enjoyed the benefit of this work, required Class Members to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

36. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

A. Numerosity

37. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class member has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within the State of California.

38. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants’ employment records will provide information as to the number and location of all Class Members.

B. Commonality

39. There are questions of law and fact common to the Class that predominates over any questions affecting only individual Class Members. These common questions of law and fact include:

- a. Whether Defendants failed to pay Class Members minimum wages;
- b. Whether Defendants failed to pay Class Members wages for all hours worked;
- c. Whether Defendants failed to pay Class Members overtime as required under Labor Code § 510;

- 1 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
2 IWC Wage Orders, by failing to provide Class Members with requisite meal
3 periods or premium pay in lieu thereof;
- 4 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
5 Orders, by failing to authorize and permit Class Members to take requisite rest
6 breaks or provide premium pay in lieu thereof;
- 7 f. Whether Defendants violated Labor Code § 226(a) by providing Class Members
8 with inaccurate wage statements;
- 9 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
10 wages and compensation due and owing at the time of termination of employment;
- 11 h. Whether Defendants' conduct was willful;
- 12 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
13 Orders by failing to maintain accurate records of Class Members' earned wages and
14 work periods;
- 15 j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
16 Members during the relevant time period for all hours worked, whether regular or
17 overtime;
- 18 k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 19 l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
20 necessary business expenses Defendants required them to incur in performing their
21 job duties;
- 22 m. Whether Defendants violated Labor Code §§ 551 and 552;
- 23 n. Whether Defendants failed to pay Class Members for sick days;
- 24 o. Whether Defendants violated Labor Code §§ 226 and 1198.5 by failing to produce
25 employment records and pay records;
- 26 p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 27 q. Whether Class Members are entitled to equitable relief pursuant to Business and
28 Professions Code § 17200 *et seq.*

1 **C. Typicality**

2 40. The claims of the named plaintiff is typical of those of Class Members. The Class
3 Members all sustained injuries and damages arising out of and caused by Defendants' common
4 course of conduct in violation of statutes, as well as regulations that have the force and effect of
5 law, as alleged herein.

6 **D. Adequacy of Representation**

7 41. Plaintiff will fairly and adequately represent and protect the interest of the Class
8 Members. Counsel who represents Class Members are experienced and competent in litigating
9 employment class actions.

10 **E. Superiority of Class Action**

11 42. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to all Class Members predominate over any questions affecting
14 only individual Class Members. Each Class Member has been damaged and is entitled to recovery
15 by reason of Defendants' illegal policies or practices of failing to compensate Class Members
16 properly.

17 43. As to the issues raised in this case, a class action is superior to all other methods for
18 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
19 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
20 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
21 be relatively small, the expense and burden of individual actions makes it difficult for the Class
22 Members to individually redress the wrongs they have suffered. Moreover, in the event
23 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
24 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
25 managing this case as a class action, and proceeding on a class-wide basis will permit Class
26 Members to vindicate their rights for violations they endured which they would otherwise be
27 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
28 them.

1 44. Class action treatment will allow those persons similarly situated to litigate their
2 claims in the manner that is most efficient and economical for the parties and the judicial system.
3 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
4 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
5 set forth the subject and nature of the instant action. The Defendants' own business records can be
6 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
7 that any further notice is required additional media and/or mailings can be used.

8 45. Defendants, as prospective and actual employers of the Class Members, had a
9 special fiduciary duty to disclose to prospective Class Members the true facts surrounding
10 Defendants' pay practices, policies and working conditions imposed upon Class Members as well
11 as the effect of any alleged arbitration agreements that may have been forced upon them. In
12 addition, Defendants knew they possessed special knowledge about pay practices and policies,
13 most notably intentionally refusing to pay for all hours actually worked which should have been
14 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
15 and policies and practices on Class Members.

16 46. Class Members did not discover the fact that they were entitled to all pay under the
17 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
18 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
19 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
20 preventing such practices from continuing. As a result, the applicable statutes of limitation were
21 tolled until such time as Plaintiff and the Class Members discovered their claims.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

24 **(Against All Defendants)**

25 47. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
26 full herein.

27 48. Defendants failed to pay Class Members minimum wages for all hours worked.
28 Defendants had a consistent policy of misstating Class Members' time records and failing to pay

1 Class Members for all hours worked. Class Members would work hours and not receive wages,
2 including as alleged above in connection with off the clock work and unlawful rounding of hours.
3 Defendants, and each of them, have intentionally and improperly changed, adjusted and/or
4 modified the hours of Class Members, which resulted in off the clock work and underpayment of
5 all wages owed to Class Members over a period of time, while benefiting Defendants. During the
6 relevant time period, Defendants thus regularly failed to pay minimum wages to Class Members,
7 to their detriment. Additionally, Defendants had a consistent policy of failing to pay Class
8 Members for hours worked during alleged meal and rest periods for which Class Members were
9 consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and
10 hour practices manifested, without limitation, applicable to the Class as a whole, as a result of
11 implementing a uniform policy and practice that denied accurate compensation to Class Members
12 as to minimum wage pay.

13 49. In California, employees must be paid at least the then applicable state minimum
14 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
15 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
16 timely pay its employees for all hours worked. Defendants failed to do so.

17 50. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
18 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
19 employees, and the payment of a less wage than the minimum so fixed is unlawful."

20 51. The applicable minimum wages fixed by the commission for work during the
21 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

22 52. The minimum wage provisions of California Labor Code are enforceable by private
23 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
24 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
25 overtime compensation applicable to the employee is entitled to recover in a civil action the
26 unpaid balance of the full amount of this minimum wage or overtime compensation, including
27 interest thereon, reasonable attorney's fees and costs of suit."

28 53. As described in California Labor Code §§ 1185 and 1194.2, any action for wages

1 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
2 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
3 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
4 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
5 be used as a credit against a minimum wage obligation.

6 54. In committing these violations of the California Labor Code, Defendants
7 inaccurately recorded, or required Class Members to input times that did not reflect their actual
8 hours worked, or calculated the correct time worked and consequently underpaid the actual time
9 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
10 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
11 Commission requirements and other applicable laws and regulations. As a result of these
12 violations, Defendant also failed to timely pay all wages earned in accordance with California
13 Labor Code § 1194.

14 55. California Labor Code § 1194.2 also provides for the following remedies: “In any
15 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
16 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

18 56. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
19 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely
20 pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
21 employee minimum wages.

22 57. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to
23 recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

24 58. Defendants have the ability to pay minimum wages for all time worked and have
25 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
26 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

27 59. Wherefore, Class Members are entitled to recover the unpaid minimum wages
28 (including double minimum wages), liquidated damages in an amount equal to the minimum

1 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
2 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
3 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
4 assessment of any statutory penalties against Defendants, in a sum as provided by the California
5 Labor Code, including § 558, and/or other applicable statutes.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

8 **(Against All Defendants)**

9 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 61. California Labor Code § 1194 provides that "any employee receiving less than the
12 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
14 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
15 may be maintained directly against the employer in an employee's name without first filing a
16 claim with the Division of Labor Standards and Enforcement.

17 62. By their conduct, as set forth herein, Defendants violated California Labor Code §
18 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
19 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
20 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
21 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
22 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
23 eight (8) hours on any seventh day of work in a workweek.

24 63. Defendants had a consistent policy of not paying Class Members wages for all
25 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
26 hours worked as addressed above. Defendants, and each of them, have intentionally and
27 improperly rounded, changed, adjusted and/or modified certain employees' hours, including
28 Plaintiff's, in order to avoid paying Class Members all earned and owed straight time and

1 overtime wages and other benefits, in violation of the California Labor Code, the California Code
2 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
3 Standards and Enforcement. Defendants have also violated these provisions by requiring Class
4 Members to work through portions of their meal period. Therefore, Class Members were not
5 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
6 in a given day, and/or forty hours in a given week. Based on information and belief, Defendants
7 did not make available to Class Members a reasonable protocol for correcting time records when
8 Class Members worked overtime hours or to fix incorrect time entries or those that Defendants
9 unlawfully rounded to the Class Members' detriment.

10 64. Defendants' failure to pay Class Members the unpaid balance of regular wages
11 owed and overtime compensation, as required by California law, violates the provisions of Labor
12 Code §§ 510 and 1198, and is therefore unlawful.

13 65. Additionally, Labor Code § 558(a) provides "any employer or other person acting
14 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
16 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
17 pay period for which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
21 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
22 this section are in addition to any other civil or criminal penalty provided by law." Defendants
23 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
24 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
25 Code § 558.

26 66. Defendants' failure to pay compensation in a timely fashion also constituted a
27 violation of California Labor Code § 204, which requires that all wages shall be paid
28 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
2 and overtime compensation earned by Class Members. Each such failure to make a timely
3 payment of compensation to Class Members constitutes a separate violation of California Labor
4 Code § 204.

5 67. Class Members have been damaged by these violations of California Labor Code
6 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

7 68. Consequently, pursuant to the California Labor Code, including Labor Code §§
8 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
9 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
10 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
11 assessment of any statutory penalties against Defendants, and each of them, and any additional
12 sums as provided by the Labor Code and/or other statutes.

13 **THIRD CAUSE OF ACTION**

14 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

15 **(Against All Defendants)**

16 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 70. Class Members regularly worked shifts greater than five (5) hours and in some
19 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
20 someone for a shift of more than five (5) hours without providing him or her with a meal period of
21 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
22 her with a second meal period of not less than thirty (30) minutes.

23 71. Defendants failed to provide Class Members with meal periods as required under
24 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
25 resulted in Class Members consistently having to work through their scheduled meal breaks
26 because the demands of the job would not avail them the opportunity to take a lawfully
27 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
28 when Class Members worked more than ten (10) hours in a given shift, they did so without

1 receiving a second uninterrupted thirty (30) minute meal period as required by law. Additionally,
2 to the extent Class Members attempted to take a break, they were prohibited from leaving the
3 premises.

4 72. Defendants thus failed to provide Class Members with meal periods as required by
5 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
6 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
7 during breaks.

8 73. Moreover, Defendants failed to compensate Class Members for each meal period
9 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
10 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
11 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
12 pay at the employee's regular rate of compensation for each workday that the meal period is not
13 provided. Defendants failed to compensate Class Members for each meal period not provided or
14 inadequately provided, as required under Labor Code § 226.7.

15 74. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
16 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
17 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
18 sum to be proven at trial, as well as the assessment of any statutory penalties against the
19 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

20 **FOURTH CAUSE OF ACTION**

21 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

23 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 76. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
26 provide that employers must authorize and permit all employees to take rest periods at the rate of
27 ten (10) minutes net rest time per four (4) work hours.

28 77. Class Members consistently worked consecutive four (4) hour shifts and were

generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants placed their needs over Class Members lawful rest breaks and this resulted in Class Members consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break. Thus, Class Members were consistently denied of their rest breaks.

78. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

79. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

80. Defendants failed to authorize and permit Class Members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Class Members with an additional hour of pay at each Class Member's effective hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

81. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

82. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

83. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

84. Defendants failed to provide Class Members with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Class Members failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Class Members and their actual hours worked were under-reported due to off the clock work. Additionally, the wage statements given to Class Members failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

85. Throughout the liability period, Defendants intentionally failed to furnish to Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,

1 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
2 Class Members with such timely and accurate wage and hour statements.

3 86. Class Members suffered injury as a result of Defendants' knowing and intentional
4 failure to provide them with the accurate wage and hour statements as required by law and are
5 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
6 Defendants have failed to provide wage statements with accurate and complete information as
7 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
8 Members cannot promptly and easily determine from the wage statement alone one or more of the
9 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
10 period or any of the other information required to be provided on the itemized wage statement
11 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
12 employer made from gross wages to determine the net wages paid to the employee during the pay
13 period, (iii) The name and address of the employer and, (iv) The name of the employee and only
14 the last four digits of his or her social security number or an employee identification number other
15 than a social security number. For purposes of Labor Code § 226(e) "promptly and easily
16 determine" means a reasonable person [i.e. an objective standard] would be able to readily
17 ascertain the information without reference to other documents or information.

18 87. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
19 § 226(a), Class Members suffered injuries, including among other things confusion over whether
20 they received all wages owed them, the difficulty and expense involved in reconstructing pay
21 records, and forcing them to make mathematical computations to analyze whether the wages paid
22 in fact compensated them correctly for all hours worked.

23 88. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
24 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
26 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
28 reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

89. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

90. Numerous Class Members are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

91. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

92. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

93. Defendants failed to pay Class Members without abatement, all wages as defined by applicable California law. Specifically, Defendants failed to pay Plaintiff for all wages due and certain at the time of termination in compliance with Labor Code §§ 201-203. Instead, Defendants never gave Plaintiff her final check. Upon information and belief, Defendants implemented the same policy and procedure for Class Members as well. Additionally, Class Members were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work and unlawfully rounded time entries to the detriment of Class Members. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

94. Defendants' failure to pay wages, as alleged entitles these Class Members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 96. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
3 employment are due and payable twice during each calendar month, on days designated in
4 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
5 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
6 during which the labor was performed, and labor performed between the 16th and the last day,
7 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
8 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
9 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
10 calendar days following the close of the payroll period.” As detailed above, Defendants
11 maintained a consistently applied policy and practice of not paying all wages earned between the
12 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
13 between the 16th and the last day of the month between the 1st and 10th day of the following month.
14 Defendants similarly failed to pay all wages earned by not more than seven calendar days
15 following the close of the payroll period. These failures all arose from either Defendants’ failure to
16 pay for all hours worked or failure to pay all earned commission wages.

17 97. All wages due and owing to Plaintiff and the Class Members, including as required
18 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
19 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
20 payable to each Class Member in each pay period that he or she was not provided with a meal
21 period or rest period or paid straight or overtime wages or commissions to which he or she was
22 entitled.

23 98. Defendants thus violated Labor Code § 204 by systematically refusing to pay
24 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
25 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
26 payday for the period involved, not less than the applicable minimum wage for all hours worked in
27 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer
28 hours than those fixed by the order or under conditions of labor prohibited by the order is

1 unlawful.” Plaintiff and the Class Members may therefore pursue damages and penalties for
2 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
3 penalties under paragraph 20 of the applicable IWC Wage Orders.

4 99. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to
5 represent they have been deprived of wages in amounts to be determined at trial, and they are
6 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
7 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
8 applicable IWC Wage Orders.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

11 **AND 1174.5**

12 **(Against All Defendants)**

13 100. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 101. California Labor Code § 1174 requires that all employers shall keep accurate time
16 and wage records for all employees. California Labor Code § 1174.5 further requires that any
17 employee suffering injury due to a willful violation of the aforementioned obligations may seek
18 damages, including civil penalties, from the employer.

19 102. During the course of Plaintiff's and Class Members’ employment, Defendants
20 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
21 required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper
22 wages, overtime, and premium pay as discussed above.

23 103. Accordingly, Defendants are liable for civil penalties pursuant to the California
24 Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

25 **NINTH CAUSE OF ACTION**

26 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

27 **(Against All Defendants)**

28 104. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in

1 full herein.

2 105. Under Labor Code § 2802(a) an employer must indemnify its employees for all
3 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
4 of his or her duties, or of his or her obedience to the directions of the employer.

5 106. Defendants have regularly required Plaintiff to incur business expenses in the
6 course of performing her required job duties for Defendants including for cell phone expenses and
7 for her uniform which consisted of scrubs with distinctive colors and non-slip shoes. Plaintiff was
8 required to use her personal cell phone to communicate with co-workers and management
9 regarding work related matters. Defendants also failed to pay for uniform maintenance. Upon
10 information and belief, Class Members incurred similar costs. These expenses incurred by
11 Plaintiff and Class Members were necessary and required of them in performing their assigned job
12 duties, but Defendants failed to reimburse Plaintiff and Class Members for all such necessary
13 expenditures. Class Members were not reimbursed for those lawful and necessary work related
14 expenses or losses incurred in direct discharge of their job duties during employment with
15 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
16 applicable IWC Wage Orders, paragraph 9.

17 107. As a result of the unlawful acts of Defendants, Class Members have been deprived
18 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such
19 amounts, plus interest and penalties thereon, attorneys' fees, and costs.

20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN UNDER LABOR CODE §§ 551**
22 **and 552**

23 **(Against All Defendants)**

24 108. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 109. At all relevant times herein, Labor Code § 551 provides that every person
27 employed in any occupation of labor is entitled to one day's rest in seven. Additionally, Labor
28 Code § 552 prohibits employers from requiring employees to work more than six consecutive days

1 without a day of rest.

2 110. At all relevant times herein set forth, Labor Code § 556 exempts an employer from
3 the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours
4 in any week or six hours in any one day thereof.

5 111. Labor Code § 558(a) provides “[a]ny employer or other person acting on behalf of
6 an employer who violates, or causes to be violated, a section of this chapter or any provision
7 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
8 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
9 underpaid employee for each pay period for which the employee was underpaid.... (2) For each
10 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
11 for which the employee was underpaid....” Labor Code § 558(c) provides “[t]he civil penalties
12 provided for in this section are in addition to any other civil or criminal penalty provided by law.”

13 112. During the relevant time period, on information and belief, Defendants sometimes
14 scheduled Class Members to work six (6) or more hours per day and more than seven (7)
15 consecutive days in a workweek. Because Class Members worked over 30 hours per week and
16 over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement.
17 To the extent that Class Members may have signed purported waivers of their right to a day's rest
18 in seven, such waivers are invalid.

19 113. Thus, during the relevant time period, and in violation of Labor Code § 551 and
20 552, Defendants willfully caused Class Members to work more than six days in seven. Class
21 Members are therefore entitled to recover civil penalties pursuant to Labor Code § 558.

22 **ELEVENTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 246**
24 **(Against All Defendants)**

25 114. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
26 full herein.

27 115. Labor Code Section 246(i) requires that employers notify employees each pay
28 period of the paid sick leave they have available for use. Pursuant to Labor Code §246(i), “An

1 employer shall provide an employee with written notice that sets forth the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
3 the employee's itemized wage statement described in Section 226 or in a separate writing provided
4 on the designated pay date with the employee's payment of wages. If an employer provides
5 unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this
6 section by indicating on the notice or the employee's itemized wage statement 'unlimited.'"

7 116. Defendants failed to provide required California paid sick days and further failed to
8 distribute and maintain required documentation concerning how many sick days were available, in
9 violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5.

10 117. Plaintiff now seeks damages pursuant to §§248.5 and 2698 *et seq.*

11 **TWELFTH CAUSE OF ACTION**

12 **FAILURE TO PRODUCE REQUESTED RECORDS, LABOR CODE §§ 226 and 1198**

13 **(Against All Defendants)**

14 118. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

16 119. Pursuant to California Labor Code § 226, current and former employees have the
17 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
18 request to their employer. Under this statute, an employer that receives a request to inspect or
19 receive a copy of records pertaining to a current or former employee must comply with the request
20 as soon as practicable, but no later than twenty-one calendar days from the date of the request.

21 120. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
22 or his or her representative, has the right to inspect and receive a copy of the personnel records
23 that the employer maintains relating to the employee's performance or to any grievance concerning
24 the employee. Under this statute, upon written request from a current or former employee or his or
25 her representative, an employer must make the contents of those personnel records available for
26 inspection or provide a copy of the personnel records to the current or former employee, or his or
27 her representative, not later than thirty calendar days from the date the employer receives the
28 written request, subject to some limited exceptions. Failure to comply with these requests allows

1 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
2 226(f).

3 121. Plaintiff sent written requests through his counsel to Defendants for their payroll
4 records, timecards, and personnel records. However, Plaintiff has not received all of his requested
5 records as of the date of this Complaint.

6 122. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
7 produce the required records requested by Plaintiff.

8 123. On information and belief, Defendants' failure to provide Plaintiff with all of his
9 requested employment records is not an isolated incident, but was instead consistent with
10 Defendants' policy and practice that applied to Plaintiff and Employees.

11 124. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
12 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.
13 Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven hundred fifty
14 dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class members
15 similarly situated are similarly entitled.

16 **THIRTEENTH CAUSE OF ACTION**

17 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

18 **(Against All Defendants)**

19 125. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 126. Plaintiff, on behalf of himself, Class Members, and the general public, brings this
22 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
23 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
24 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
25 interest within the meaning of Code of Civil Procedure § 1021.5.

26 127. Plaintiff is a "person" within the meaning of Business & Professions Code
27 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
28 relief, restitution, and other appropriate equitable relief.

1 128. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
2 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
3 fraudulent in that Defendants' policy and practice failed to provide the required amount of
4 compensation for missed meal and rest breaks, and failed to adequately compensate Class
5 Members for all hours worked, due to systematic business practices as alleged herein that cannot
6 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
7 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
8 which this Court should issue injunctive and equitable relief, pursuant to California Business &
9 Professions Code § 17203, including restitution of wages wrongfully withheld.

10 129. Wage-and-hour laws express fundamental public policies. Paying employees their
11 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
12 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
13 vigorously to enforce minimum labor standards, to ensure that employees are not required or
14 permitted to work under substandard and unlawful conditions, and to protect law-abiding
15 employers and their employees from competitors who lower costs to themselves by failing to
16 comply with minimum labor standards.

17 130. Defendants have violated statutes and public policies. Through the conduct alleged
18 in this Complaint Defendants have acted contrary to these public policies, have violated specific
19 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
20 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
21 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
22 guaranteed to all employees under the law.

23 131. Defendants' conduct, as alleged above, constitutes unfair competition in violation
24 of the Business & Professions Code § 17200 *et seq.*

25 132. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
26 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
27 reasonable care should have known that their conduct was unlawful; therefore their conduct
28 violates the Business & Professions Code § 17200 *et seq.*

133. By the conduct alleged herein, Defendants have engaged and continue to engage in a business practice which violates California and federal law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court should issue declaratory and other equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

134. As a proximate result of the above-mentioned acts of Defendants, Class Members have been damaged, in a sum to be proven at trial.

135. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Class Members to the money Defendants have unlawfully failed to pay.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Class Members and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of all unpaid wages, including overtime and double-time pay, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Class Members for each missed or deficient meal period where no premium pay was paid therefor from

four (4) years prior to the filing of this action, as may be proven;

6. For compensatory damages in the amount of the hourly wage made by Class Members for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be proven;

8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

9. For restitution and/or damages for all amounts unlawfully withheld from the wages for all class members in violation of Labor Code § 204, as may be proven;

10. For restitution and/or damages for all amounts unlawfully withheld from the wages for all Class Members in violation of Labor Code § 2802, as may be proven;

11. For penalties pursuant to Labor Code §558 for Class Members for violating Labor Code §§ 551 and 552 as may be proven;

12. For penalties pursuant to Labor Code § 246, as may be proven;

13. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;

15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;

16. For other wages and penalties under the Labor Code as may be proven;

17. For all general, special, and incidental damages as may be proven;

18. For an award of pre-judgment and post-judgment interest;

19. For an award providing for the payment of the costs of this suit;

20. For an award of attorneys' fees; and

21. For such other and further relief as this Court may deem proper and just.

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DATED: August 4, 2023

DAVID YEREMIAN ASSOCIATES, INC.

By: 
David Yeremian
Natalie Haritonian
Attorneys for Plaintiff VENITA BALL, and
all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: August 4, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

By: 
David Yeremian
Natalie Haritonian
Attorneys for Plaintiff VENITA BALL, and
all others similarly situated

EXHIBIT 3