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on behalf of herself and others similarly situated

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

RASHEDA K. KIRBY and AMOURA
BURTON, on behalf of themselves and all
others similarly situated, and the general
public,

Plaintiffs,

vs.

TROVE RECOMMERCE, INC., a
Delaware corporation; TROVE, INC., a
business entity of unknown form;
YERDLE, INC., a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CIV04345

Judge: Hon. Jeffrey R. Finigan

Department: 24

CLASS ACTION

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

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of William C.
Sung; Declaration of Jodey Lawrence;
Declaration of Rasheda K. Kirby; Declaration of
Amoura Burton; Memorandum of Points and
Authorities; and [Proposed] Order]*

Date: August 1, 2025

Time: 2:00 p.m.

Dept.: 24

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

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

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

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

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

14 8. For purposes of this motion, the "Class" or "Class Members" consist of all current and
15 former hourly-paid or non-exempt employees of Defendant in California during the Class Period
16 from September 13, 2019 through June 10, 2024. I do not believe that I have any conflicts of
17 interest with the Class or with the Class Representatives. I am not related to the Class
18 Representatives. I have not previously represented Defendant in any matter. I respectfully submit
19 that I, and D.Law, Inc. are well suited to act as Class Counsel in this action, and we have and will
20 continue to vigorously represent the interests of the Class Members.

21 **PROCEDURAL HISTORY**

22 9. On September 13, 2023, Plaintiff Kirby filed a Class Action Complaint in Case No. 23-
23 CIV-04345 against Defendant, alleging the following wage and hour violations: (1) Failure to
24 Provide Meal Periods under Labor Code §§ 204, 223, 226.7, 512 and 1198; (2) Failure to Provide
25 Rest Periods Under Labor Code §§ 204, 223, 226.7 and 1198; (3) Failure to Pay Hourly Wages
26 and Overtime Under Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198; (4) Failure
27 to Pay Proper Sick Pay Under Labor Code § 246; (5) Failure to Pay Accurate Written Wage
28 Statements Under Labor Code § 226(a); (6) Failure to Timely Pay All Final Wages Under Labor

1 Code §§ 201, 202 and 203; (7) Failure to Indemnify Under Labor Code § 2802; (8) Unfair
2 Competition Under Business & Professions Code § 17200 *et seq.* On December 13, 2023,
3 Plaintiff Kirby filed a First Amended Complaint adding a ninth cause of action for penalties
4 pursuant to Labor Code § 2699, *et seq.*

5 10. On December 22, 2023, Plaintiff Burton filed a Class and Representative Action
6 Complaint in Case No. 23-CIV-06108, alleging the following wage and hour violations: (1)
7 Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest
8 Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to
9 Reimburse Necessary Business Expenses; (8) Unfair Competition; and (9) Civil Penalties Under
10 PAGA.

11 11. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Burton and Plaintiff Kirby
12 gave timely written notice to Defendant and the LWDA by sending their PAGA Notices on
13 August 22, 2023 and September 13, 2023, respectively. The PAGA notices are attached hereto as
14 **Exhibit 2**. On February 3, 2025, Plaintiffs filed a Consolidated Second Amended Complaint in
15 this Court which consolidated the Kirby and Burton actions into one single class and PAGA
16 representative action.

17 **INVESTIGATION AND DISCOVERY**

18 12. Before filing the lawsuit, Class Counsel investigated and researched the facts and
19 circumstances underlying the pertinent issues and the law applicable thereto. This required
20 thorough discussions and interviews between Class Counsel and Plaintiffs, as well as preliminary
21 research into the various legal issues involved in the case. After conducting their initial
22 investigation, Class Counsel determined that Plaintiffs' claims were well-suited for class and
23 representative action adjudication owing to what appeared to be a common course of conduct
24 affecting a similarly situated group of employees.

25 13. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
26 and claims giving rise to the action, including: (1) conducting informal discovery, and meeting
27 and conferring with defense counsel about the same; (2) reviewing and analyzing a sampling of
28 time and pay records for the Class as well as employee handbooks, relevant policies and other

1 documentation, including meal and rest break policies and timekeeping policies; (3) researching
2 the applicable law and potential defenses; (4) hiring an expert to construct damage models based
3 on interpretations of California law; and (5) reviewing information provided by Defendant at the
4 mediation.

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

10 15. On May 10, 2024, the Parties participated in a full-day mediation, which was presided
11 over by Brandon McKelvey, Esq., a respected and highly experienced mediator in wage and hour
12 class actions. During mediation, Plaintiffs' and Defendant's counsel discussed all aspects of the
13 case, including the risks of litigation and the risks to both Parties of proceeding with a motion for
14 class certification, as well as the law relating to unpaid wages, meal periods, rest period, sick pay,
15 wage statements, and final pay. The Parties agreed to settle the lawsuit according to the terms set
16 forth in the Settlement Agreement. From Class Counsel's review of the facts, strengths, and
17 weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own
18 prior litigation experience, Class Counsel believes that the recovery for each class member is fair
19 and reasonable taking into consideration the amounts received in other wage and hour class
20 actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class
21 Member's claim to the settlement award he or she will receive. Further, and based on the
22 settlement negotiations, which were extensive and conducted in good faith and at arm's length
23 between attorneys with substantial experience litigating class actions and wage and hour cases,
24 the Settlement Agreement was the product of a non-collusive settlement process in which the
25 Parties were forced to make significant compromises in the interest of reaching a full and
26 complete settlement of the lawsuit.

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SUMMARY OF SETTLEMENT

16. Defendant has agreed to pay \$435,000.00 (“Gross Settlement Amount”) on a non-reversionary basis and to separately pay all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (Exh. 1, ¶¶ 1.22, 3.1, pp. 3, 6.)

17. The Settlement Agreement defines the “Class” or “Class Members” all current and former hourly-paid or non-exempt employees of Defendant in California during the Class Period, which is September 13, 2019 through June 10, 2024. (Exh. 1, ¶¶ 1.5, 1.9, 1.12 pp. 1, 2.) The Settlement Agreement also defines “Aggrieved Employees” as all current and former hourly-paid or non-exempt employees of Defendant in California during the PAGA Period, which is September 13, 2022 to June 10, 2024. (Exh. 1, ¶¶ 1.4, 1.34, pp. 1, 4.)

18. The “Net Settlement Amount” shall be the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Exh. 1, ¶ 1.28, p. 3.) These amounts are detailed as follows:

- Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$145,000.00, for attorneys’ fees, and Class Counsel Litigation Expenses Payment of not more than \$30,000.00 for litigation costs; (Exh. 1, ¶ 3.2.2, p. 6.);
- Class Representative Service Payment of not more than \$5,000.00 to each Plaintiff, totaling \$10,000.00, for their service as the Class Representatives; (Exh. 1, ¶ 3.2.1, p. 6.);
- Administration Expenses Payment of up to \$9,500.00 to the Settlement Administrator, Phoenix Settlement Administrators (“Phoenix”), for settlement administration costs; (Exh. 1, ¶ 3.2.3, p. 7.);
- PAGA Penalties in the amount of \$20,000.00 for civil penalties under PAGA, with 75% (\$15,000.00) paid to the LWDA (“LWDA PAGA Payment”) and 25% (\$5,000.00) paid to

1 Aggrieved Employees based on the number of pay periods each Aggrieved Employee worked
2 during the PAGA Period (“Individual PAGA Payment”); (Exh. 1, ¶ 3.2.5, p. 7.)

3 19. The Individual Class Payment is each Class Member’s share of the Net Settlement
4 Amount and will be calculated and apportioned from the Net Settlement Amount based on the
5 number of Workweeks a Class Member worked during the Class Period. (Exh. 1, ¶ 3.2.4, p. 7.)
6 Additionally, the Parties agreed that the Individual Settlement Payment shall be allocated as
7 follows: 25% as alleged unpaid wages subject to all applicable tax withholdings; and 75% as
8 alleged unpaid interest and penalties. (Exh. 1, ¶ 3.2.4.1, p. 7.)

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

13 21. Class Members shall each receive a “Class Notice” via regular First-Class U.S. Mail,
14 using the most current, known mailing addresses identified in the Class List. (Exh. 1, ¶ 7.4.2, p.
15 12.) Before mailing, the Settlement Administrator will perform a search based on the National
16 Change of Address Database for information to update and correct for any known or identifiable
17 address changes. (*Id.*) Any Class Notice returned by the USPS as undelivered, the Administrator
18 shall re-mail the Class Notice using any forwarding address provided by the USPS. (Exh. 1, ¶
19 7.4.3, p. 12.) If the USPS does not provide a forwarding address, the Administrator shall conduct
20 a Class Member Address Search, and re-mail the Class Notice to the most current address
21 obtained. (*Id.*)

22 22. Class Members shall have forty-five (45) days after the Administrator mails the Class
23 Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed)
24 to dispute the information provided in their Class Notices of Class Action Settlement and they
25 must timely produce evidence to support the information is inaccurate. (Exh. 1, ¶, 7.6, p. 13.) In
26 the absence of any contrary documentation, the Administrator is entitled to presume that the
27 Workweeks contained in the Class Notice are correct so long as they are consistent with the Class
28 Data. (Exh. 1, ¶ 7.6, p. 13.)

1 23. Class Members wishing to opt-out from the Settlement Agreement must sign and
2 postmark a written Request for Exclusion to the Settlement Administrator within the Response
3 Deadline (Exh. 1, ¶ 7.5.1, p. 12.) The Exclusion Deadline will be forty-five (45) calendar days
4 after the date the Class Notice was mailed (plus an additional fourteen (14) days for Class
5 Members whose Class Notice is remailed). (*Id.*)

6 24. Class Members will also have the opportunity to object to the Settlement and/or this
7 Agreement, by serving a copy of the objection to the Settlement Administrator at Phoenix. (Exh.
8 1, ¶ 7.7.2, p. 14.) All objections must be served within forty-five (45) calendar days of first
9 mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class
10 Notice was re-mailed). (Exh. 1, ¶ 7.7.2, p. 14.)

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

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

18 26. The strength of the Plaintiff's case in light of the settlement amount is deemed by
19 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
20 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
21 minimum wages and overtime, failed to provide meal and rest breaks, failed to pay sick pay,
22 failed to provide reimbursement of business expenses, failed to provide accurate wage statements,
23 and failed to pay all wages upon termination, all in violation of California law. Plaintiffs seek
24 related violations of California's Business & Professions Code and penalties pursuant to Labor
25 Code § 2699 *et seq.* The merits of each of these claims will be addressed separately below.

26 27. Based on the data provided, Class Counsel estimated the potential realistic exposure for
27 the main claims as follows: unpaid wage claim at **\$54,611.20** for minimum wages and
28 overtime, meal period claim at **\$178,318.49**, rest period claim at **\$117,925.70**, wage

1 statement claim at **\$59,125.00**, waiting time penalties at **\$167,855.68**, unreimbursed
2 business expenses claim at **\$30,050.00**, and on PAGA at **\$60,250.00**, for a total maximum
3 exposure of **\$668,136.07**.

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

8 **Minimum Wages and Overtime**

9 29. Plaintiffs alleged that Defendant failed to pay Plaintiffs and other Class Members
10 minimum wages and overtime for all hours worked. Specifically, Plaintiffs contended that they
11 and other Class Members had to perform work off-the-clock prior to the start of their shifts,
12 including undergoing mandatory COVID-19 screening measures such as temperature checks and
13 questionnaires, putting away personal items, and waiting for time clocks to become available for
14 clocking in. Lastly, Plaintiffs contended that Defendant paid incentive and other nondiscretionary
15 bonuses to Class Members but did not include that compensation when determining the regular
16 rate of pay for payment of overtime pay.

17 30. Defendant denied all allegations and contended that it paid for all reported hours
18 worked, that Class Members were trained to record all hours worked, that it paid all wages owed
19 at the proper rates, and that any bonuses or incentives paid to Class Members were discretionary
20 in nature. Defendant further argued that given its written policies and practices, any unrecorded
21 hours were likely subject to individualized inquiry and unlikely to be certified. Based on the
22 above detailed facts, Class Counsel's estimated, based on the analysis of damages provided by
23 Plaintiffs' expert, Defendant's exposure on unpaid wages claims to be approximately
24 \$271,704.00 (assuming 5 minutes of off the clock work per shift and 76.6% attributable to
25 overtime). Plaintiffs' expert valued the regular rate underpayment claim at approximately
26 \$1,352.00. However, given Defendant's defenses and the potential hurdles facing certification of
27 this claim, Class Counsel applied an 80% discount making for an adjusted realistic exposure of
28 \$54,611.20 for Defendant.

Meal Periods and Rest Breaks

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

32. Plaintiffs argued that Defendant had a common practice and policy of denying compliant meal periods. Specifically, Plaintiffs contended that Class Members were regularly interrupted during their meal periods with work-related tasks due to understaffing and heavy workloads and therefore were not provided with an off-duty thirty (30) minute meal period in accordance with California law. Moreover, Plaintiffs contended that Class Members were not compensated with an additional hour of compensation or “premium pay” when they were not provided with compliant meal periods by Defendant.

33. Defendant contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time. Defendant also argued that its written meal period policies were valid and disseminated to all Class Members. Defendant also contended that on the occasions when compliant meal periods were not provided, Class Members were paid premium pay in accordance with the law.

34. Class Counsel’s expert estimated Defendant’s maximum total exposure on the meal break claim at approximately \$891,592.45 (38,021 unique meal break violations x \$23.45 regular rate of pay). However, Class Counsel believes this estimate is high given Defendant’s defenses and potential hurdles facing certification of this claim and thus provided an 80% discount making Defendant’s adjusted realistic exposure \$178,318.49.

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

1 36. Defendant maintained that it did provide the reasonable opportunity for Class Members
2 to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks
3 need not be recorded. As these considerations would likely depress the damages *vel non*
4 ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break
5 claim. Based on the analysis of damages provided by Plaintiffs' expert, Class Counsel estimated
6 Defendant's maximum total exposure on the rest break claim at approximately \$1,179,257.00
7 (assuming a 50% rest break violation rate for all Class Member shifts x \$23.45 regular rate of
8 pay). However, Class Counsel believes this estimate is high given the difficulty of proving rest
9 break violations at trial and the potential hurdles facing certification of this claim, and thus
10 applied a 90% discount making Defendant's exposure more likely to be \$117,925.70.

11 **Paystub Violations**

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

23 38. Defendant contended that Plaintiffs' claim for further Labor Code § 226(e) penalties
24 would depend in large part on the underlying wage claims, and thus be subject to the same
25 defenses. Even if Plaintiffs could first establish liability for the underlying claims, Defendant
26 contends that Plaintiffs and Class Members would be unable to establish that they suffered injury
27 and that Defendant's conduct was willful and knowing. Defendant further contended that wage
28 claim violations, even if established, could not be the predicate for a Labor Code § 226 wage

1 statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96;
2 *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage statement need
3 only document compensation actually received and the hours used to calculate that
4 compensation). Finally, because the damages for this cause of action are penalties, the statute of
5 limitations only runs from one year prior to the filing of the original complaint. *See* Cal. Civ. Pro.
6 § 340.

7 39. Class Counsel estimated, based on the analysis of damages provided by Plaintiffs'
8 expert, Defendant's maximum total exposure on the section 226 claim at approximately
9 \$591,250.00 (\$50/\$100 per pay period x 6,025 pay periods during the relevant period). The
10 Parties discussed these issues, and in light of these and other considerations Class Counsel
11 factored in a reduction of liability and damages for this cause of action. Class Counsel believes it
12 may be difficult to prevail on this claim because Class Members would need to show that they
13 suffered an injury and that Defendant's noncompliance was knowing and intentional (on top of
14 the challenges described above with the underlying wage and break claims) which are both
15 subject to individualized issues making certification of this claim difficult to achieve. Thus, Class
16 Counsel provided a 90% discount making Defendant's adjusted exposure \$59,125.00.

17 **Failure to Pay Final Wages**

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

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

28 42. Defendant contended that this claim is merely derivative of the underlying claims that

1 are without merit. Defendant argued that, under Labor Code § 203, employers are only obligated
2 to pay waiting-time penalties if they “willfully” fail to pay wages due and owing at the time of
3 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

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

7 A “good faith dispute” that any wages are due occurs when an employer presents
8 a defense, based in law or fact, which, if successful, would preclude any recovery
9 on the part of the employee. The fact that a defense is ultimately unsuccessful will
10 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.”

11 Even if Plaintiffs could first establish liability for the underlying claims, Defendant contends that
12 Plaintiffs and Class Members would be unable to establish that Defendant’s conduct was willful
13 and knowing. Defendant maintained that because they had viable defenses in both law and fact,
14 especially in light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in
15 any case, such penalties were subject to a three-year limitations period under Labor Code §
16 203(b).

17 43. Plaintiffs’ expert estimated Defendant’s maximum total exposure on the section 203
18 claim at approximately \$1,678,556.88 (308 terminated employees x 30 days x 7.8 hours per shift
19 x \$23.29 average rate of pay). Class Counsel estimates it would be difficult to recover waiting
20 time penalties given that Plaintiffs would need to show willfulness on top of proving the
21 underlying wage and break claims which are also potentially subject to individualized issues
22 making certification of this claim difficult to achieve. Thus, Class Counsel provided a 90%
23 discount making Defendant’s adjusted exposure \$167,855.68.

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

25 44. Labor Code § 2802 provides that an employer must reimburse employees for all
26 necessary expenditures incurred in the performance of their job duties. Plaintiffs contended that
27 they and other Class Members incurred necessary business-related expenses, including the use of
28 their personal cell phones for work. Defendant contended that Plaintiffs and Class Members were

1 not required to use their personal cell phones for work and that any such expenses are not
2 required to be reimbursed under the law. Plaintiffs' counsel estimates, based on the analysis of
3 damages provided by Plaintiffs' expert, that Defendant's maximum total exposure for failing to
4 reimburse business expenses is approximately \$150,250.00 (assuming \$25 per month). Owing to
5 the arguments above and the fact that this claim was not a major driver of exposure in this case,
6 Class Counsel accordingly applied an 80% discount, resulting in \$30,050.00 in maximum realistic
7 liability exposure for Defendant.

8 **PAGA Penalties**

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

20 46. Plaintiffs contend that the provisions of the Labor Code potentially triggering PAGA
21 penalties in this case include but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 246, 432.5, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2,
23 1197, 1198, 1199, 2698, 2699 *et seq.*, and 2802 and applicable IWC Wage Orders. PAGA
24 penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may
25 award a lesser amount than the maximum civil penalty amount specified by this part if, based on
26 the facts and circumstances of the particular case, to do otherwise would result in an award that is
27 unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App.
28 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant here

1 maintained that it had a strong argument that it would be unjust to award maximum PAGA
2 penalties.

3 47. Furthermore, PAGA penalties are also derivative of each and every other claim, and
4 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
5 underlying claims. Defendant also contends that even if Plaintiffs and Class Members could
6 establish Labor Code violations, the Court has the discretion to award less than the maximum
7 civil penalty amount and would award substantially less civil penalties here because Defendant
8 acted in good faith to comply with the relevant wage and hour laws, and that even if there were
9 violations established, they would be minor and technical in nature. Finally, under *Amaral v.*
10 *Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be argued that penalties under PAGA could, at
11 best, be awarded only at the rates obtainable for initial violations under the applicable statutes,
12 because Defendant had never been notified of the alleged violations. *Id.* at 1208-1209. Moreover,
13 Section 2699(e)(1) authorizes the Court to exercise the same discretion as the DLSE whether to
14 award civil penalties. *Amaral* 163 Cal. App. 4th 1157, 1211-12. Therefore, if the Labor
15 Commissioner - on whose behalf Plaintiff is prosecuting this action for civil penalties - would not
16 impose civil penalties in a case like this, the Court may not award civil penalties. Moreover, in
17 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1136, the Court of
18 Appeal affirmed the trial court's reduction of PAGA civil penalties by 30 percent, finding that
19 awarding the full penalties would have been "unjust" because "...a court may award a lesser
20 amount than the maximum civil penalty amount specified by this part if, based on the facts and
21 circumstances of the particular case, to do otherwise would result in an award that is unjust,
22 arbitrary and oppressive, or confiscatory." Additionally, PAGA penalties for multiple Labor Code
23 violations are "stacked," and plaintiff is entitled to recover penalties for multiple violations based
24 on the same conduct. *Hernandez v. Towne Park, Ltd.*, No. 12 Civ. 02972, 2012 WL 2373372, at
25 *17 n.77 (C.D. Cal. June 22, 2012) ("federal courts applying California law have concluded that
26 stacking is appropriate"; defining "stacking" as multiple PAGA penalties assessed for the same
27 pay period for different Labor Code violations). However, as discussed above, PAGA provides
28 that the Court "may award a lesser amount than the maximum civil penalty amount specified by

1 this part if, based on the facts and circumstances of the particular case, to do otherwise would
2 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

3 48. Class Counsel estimated Defendant’s maximum total exposure on the PAGA claim at
4 approximately \$602,500.00 (\$100 x 6,025 pay periods (no stacking)). Class Counsel then applied
5 discounts in light of the countervailing arguments with regard to the other causes of action, and
6 moreover the Court’s power to award “a lesser amount than the maximum civil liability.” A
7 discount of 90% would make the adjusted realistic exposure \$60,250.00. The Parties also
8 considered that the purpose of PAGA is to “achieve maximum compliance with state labor
9 laws,”. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
10 Settlement’s contemplated PAGA payment of \$20,000.00 appropriate.

11 **Unfair Business Practices**

12 49. Plaintiffs pleaded this cause of action in order to augment his other causes of action
13 and aid in their prosecution. Business & Professions Code § 17208 extends the statute of
14 limitations on Plaintiffs’ wage claims, which qualify as unfair business practices, to four years
15 rather than the three years provided by statute.

16 **Summary**

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

22 51. Class Counsel had to apply appropriate discounts in light of the facts and law as
23 discussed above. Thus, this settlement, like most others, was the product of compromise. As
24 addressed above, Plaintiff estimated that Defendant faced a total realistic exposure of
25 approximately \$688,136.07. The Gross Settlement Amount of \$435,000.00 represents a recovery
26 for the Class of approximately 65% of the total realistic exposure Plaintiffs estimated that
27 Defendant could face on the primary claims in this case. Plaintiffs and Class Counsel submit that
28 this is an excellent result in the face of uncertainty and the prospects of protracted and contested

1 litigation through class certification, summary judgment, and trial, and particularly in light of all
2 of the factors described above. Under the Settlement, each of the approximately 330 Class
3 Members will receive an average of \$668.18 based on a straight average.

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

9 53. As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the
10 Action have merit, they also acknowledge the expense, delay, and risks of continued litigation.
11 Although the Parties engaged in significant informal discovery in advance of mediation, the
12 Parties still had significant discovery to complete had the matter not settled. This would have
13 required the expenditure of substantial time and resources by both Parties that would have very
14 likely spanned several years. Even if Plaintiffs were to certify the classes, the Parties would incur
15 considerably more attorney fees and costs through a possible decertification motion, trial, and
16 possible appeal. This Settlement avoids those risks and the accompanying expense.

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

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

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

1 were based.

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

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

27 **NOTICE TO AND REACTION OF CLASS MEMBERS**
28 **TO THE PROPOSED SETTLEMENT**

1 58. It is premature to address this factor now, at the preliminary approval stage; however,
2 some observations are in order. First, the notification procedure set out in the Settlement
3 Agreement provides the greatest likelihood that each and every Class Member will receive the
4 Notice of Class Action Settlement (“Class Notice”), attached to the Settlement Agreement as
5 **Exhibit A**. Under the Settlement Agreement, the Settlement Administrator will send the Class
6 Notice to each Class Member via First Class U.S. mail. (Exh. 1, ¶ 7.4.2, p. 12.) Before mailing,
7 the Settlement Administrator will perform a search based on the National Change of Address
8 Database for information to update and correct for any known or identifiable address changes.
9 (*Id.*) If a new address is obtained by way of a returned Class Notice, then the Settlement
10 Administrator will promptly forward the original Class Notice to the updated address via first-
11 class regular U.S. mail. (Exh. 1, ¶ 7.4.3, p. 12.) Thus, most, if not all, Class Members will likely
12 receive the Class Notice.

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

18 60. If a Class Member disputes the number of workweeks stated for that Class Member in
19 the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter
20 by submitting in writing under penalty of perjury the workweeks that the Class Member claims to
21 have actually worked for Defendant during the Class Period. (Exh. 1, ¶ 7.6, p. 13.) Defendant’s
22 records shall have a rebuttable presumption of correctness. After consultation with Class Counsel
23 and Defendant’s Counsel, the Settlement Administrator will make a determination of the Class
24 Member’s total workweeks during the applicable period. *Id.*

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

26 61. The foregoing discussion establishes the fairness of the class-action settlement in the
27 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
28 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and

adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement. Defendant has agreed to pay fair value to settle Plaintiffs' claims given the existence of legal uncertainty. From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class Counsel believe that this case could not have settled on better terms under the circumstances.

REQUEST FOR ATTORNEYS' FEES

62. Under the Settlement, Class Counsel will seek a Class Counsel Fees Payment of no more than \$145,000.00 (up to one-third of the Gross Settlement Amount) and a reasonable Class Counsel Litigation Expenses Payment not to exceed \$30,000.00, subject to approval by the Court. (Exh. 1, ¶ 3.2.2, p. 6.) Defendant will not oppose Class Counsel's fees and cost request. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

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

64. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would

1 still be justified. Class Counsel will more fully brief the Court on its lodestar in the motion for
2 final approval.

3 **ENHANCEMENT TO PLAINTIFFS AS THE CLASS REPRESENTATIVE**

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

11 66. The courage it took to stand up to Defendant by filing and litigating this action in this
12 way should not be underestimated. By suing Defendant, Plaintiffs increased his risk of retaliation
13 by prospective employers.

14 67. But Plaintiffs did not allow their fears of the potential repercussions of being class
15 representative deter them from acting for the benefit of Class Members. To the contrary, Plaintiffs
16 have been intimately involved in this case since its inception. They have devoted a substantial
17 amount of time to helping Class Counsel effectively develop and prosecute this action at every
18 stage of the litigation. Both before and after the filing of this lawsuit, Plaintiffs conferred with
19 Class Counsel to discuss every aspect of their case. Plaintiffs provided Class Counsel with
20 information about Defendant and about the industry generally, reviewed documents, identified
21 witnesses, consulted Class Counsel throughout the litigation repeatedly and at length, participated
22 in the mediation process, monitored the progress of the litigation with Class Counsel, and
23 reviewed and signed the Settlement Agreement.

24 68. Plaintiffs have spent a significant amount of time with Class Counsel detailing their
25 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
26 action. They have diligently, adequately, and fairly represented Class Members, and have not
27 placed their interests above any member of the putative class.

28 69. In light of the foregoing, Class Counsel believes that the Class Representative Service

1 Payment in the amount of \$5,000.00 to each Plaintiff, totaling \$10,000.00, is fair and reasonable.
2 Although Class Counsel appreciate that the Court has a duty to ensure that class representatives
3 are not overcompensated at the expense of the class, modest incentive awards in employment
4 class actions, such as the one here, are necessary not only to compensate class representatives for
5 the time they spend in the case, but also, and more importantly, to encourage aggrieved
6 employees to challenge questionable employment practices notwithstanding the very real
7 consequences they may face.

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

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

17 a. Numerosity. The putative class is so numerous that joinder of all members is
18 impractical. Class Members are all current and former hourly-paid or non-exempt employees of
19 Defendant in California during the Class Period from September 13, 2019 through June 10, 2024.
20 Documents and information exchanged between the Parties reflect a class of approximately 330
21 Class Members and 211 Aggrieved Employees. Thus, there are a sufficient number of Class
22 Members to warrant certifying this as a class action for settlement purposes.

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

26 c. Typicality. A class representative’s claims are typical when they arise from the
27 same event, practice, or course of conduct that gives rise to the claims of other putative class
28 members, and if their claims rest on the same legal theories. The class representative’s claims

1 must be “typical” but not necessarily identical to the claims of other class members. It is
2 sufficient that the representative is similarly situated so that he or she will have the motive to
3 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
4 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been
5 the law in California that the class representative must have identical interests with the class
6 members.”). Thus, it is not necessary that the class representative should have personally incurred
7 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
8 (2001) 91 Cal.App.4th 224, 228.

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

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

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

1 wage-and-hour litigation, especially class actions, and have zealously represented the interests of
2 the class in litigating this case. *See infra* ¶¶ 3-8. Accordingly, the adequacy requirement is
3 satisfied.

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

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

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

1 any one Class Member individually. If Class Members are forced to litigate their claims
2 individually this would result in about 330 individual actions against Defendant. Here, the
3 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
4 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
5 dwarf a potential recovery.

6 h. San Mateo County is a compelling forum for this action given that Defendant's
7 location is in San Mateo County and numerous Class Members work in this County.

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

11 71. On July 10, 2025, Plaintiffs submitted the Settlement Agreement and this Motion to the
12 LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as
13 **Exhibit 3.**

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

16 Executed this July 10, 2025, at Glendale, California.

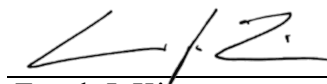
17 
18 _____
Enoch J. Kim

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Rasheda Kirby and Amoura Burton (collectively, “Plaintiffs”) and Defendant Trove Recommerce, Inc. fka Yerdle, Inc. (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1.1 “Action” means the consolidated operative Complaint of the civil actions initially filed and separately maintained by Plaintiffs against Defendant but since consolidated into one single class and PAGA representative action entitled *Rasheda Kirby, et al. v. Trove Recommerce, Inc., et al.*, Case No. 23-CIV-04345, and pending in Superior Court of the State of California, County of San Mateo.

1.2 “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses, which are anticipated to not exceed \$9,500.

1.4 “Aggrieved Employees” means all current and former hourly-paid or non-exempt employees of Defendant in California during the PAGA Period.

1.5 “Class” means all current and former hourly-paid or non-exempt employees of Defendant in California during the Class Period.

1.6 “Class Counsel” means David Yeremian, David Keledjian, David Arakelyan, and Enoch Kim of D.Law, Inc. and William C. Sung and Tiffany Luu of Justice for Workers, P.C.

1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means 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 Workweeks and PAGA Pay Periods (or sufficient information to calculate the number of such workweeks).

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, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 “Class Period” means the period from September 13, 2019 through June 10, 2024 (unless modified pursuant to Section 8 of this Agreement).

1.13 “Class Representatives” means Rasheda Kirby and Amoura Burton, the named Plaintiffs in the Operative Complaint in the Action seeking Court approval to serve as Class Representatives.

1.14 “Class Representative Service Payments” mean the payments to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15 “Court” means the Superior Court of California, County of San Mateo.

1.16 “Defendant” means named Defendant Trove Recommerce, Inc. fka Yerdle, Inc.

1.17 “Defense Counsel” means Shaun Voigt of Fisher & Phillips LLP.

1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19 “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 Four Hundred Thirty-Five Thousand Dollars (\$435,000) 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, Employee’s Taxes and Required Withholdings, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Administration Expenses Payment. The Gross Settlement Amount does not include employer’s share of payroll taxes which will be paid by Defendant in addition to the Gross Settlement Amount.

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 Class Workweeks worked during the Class Period, less Employee’s Taxes and Required Withholding.

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 Workweeks 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 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 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, 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 “Operative Complaint” means the operative Consolidated Second Amended Complaint filed by Plaintiff Kirby and will encompass any claims articulated and alleged therein.

1.31 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.32 “PAGA Notices” means Plaintiff Burton’s August 22, 2023 letter and Plaintiff Kirby’s September 13, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.33 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and 75% to the LWDA (\$15,000) in settlement of PAGA claims.

1.34 “PAGA Period” means the period from September 13, 2022 to June 10, 2024 (unless modified pursuant to Section 8 of this Agreement).

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 “Pay Period” means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.37 “Plaintiffs” means Rasheda Kirby and Amoura Burton, the named Plaintiffs in the Action.

1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

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

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

1.42 “Released Parties” means: Defendant and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates.

1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.44 “Response Deadline” means 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 fourteen (14) calendar days beyond the Response Deadline has expired.

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

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

2. RECITALS.

2.1 On September 13, 2023, Plaintiff Kirby filed a Class Action Complaint in Case No. 23-CIV-04345 against Defendant, alleging the following wage and hour violations: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Hourly Wages and Overtime; (4) Failure to Provide Sick Pay; (5) Failure to Provide Accurate Written Wage Statements; (6) Failure to Timely Pay All Final Wage; (7) Failure to Indemnify; and (8) Unfair Competition. On December 13, 2023, Plaintiff Kirby filed a First Amended Complaint adding a cause of action under PAGA.

2.2 On December 22, 2023, Plaintiff Burton filed a Class and Representative Action Complaint in Case No. 23-CIV-06108, alleging the following wage and hour violations: (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; (8) Unfair Competition; and (9) Civil Penalties Under PAGA.

2.3 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Burton and Plaintiff Kirby gave timely written notice to Defendant and the LWDA by sending their PAGA Notices on August 22, 2023 and September 13, 2023, respectively.

2.4 Prior to mediation, Plaintiffs obtained, through informal discovery, documents, and information obtained pertaining to their wage and hour claims, including, but not limited to, wage and hour policy and procedure documents, an adequate sampling of employee time and payroll records, and the exchanges of relevant data points pertaining to the Class and PAGA claims. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5 On May 10, 2024, the Parties participated in a full-day mediation, which was presided over by Brandon McKelvey, Esq. and led to this Agreement to settle the Action.

2.6 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. Defendant further denies that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment.

2.7 The Parties agree that this Agreement is for settlement purposes only and if, for any reason, the Agreement is not approved, the Agreement will be of no force or effect. In such event, nothing in this Agreement shall be used or construed by or against any party as a determination, admission, or concession of any issue of law or fact in the Action; and the Parties do not waive, and instead expressly reserve, their respective rights with respect to the prosecution and defense of this Action as if this Agreement never existed.

2.8 The Court has not granted class certification.

2.9 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.

2.10 The Agreement set forth herein intends to achieve the following: (1) an entry of an order approving the Settlement; (2) entry of judgment of the Action; (3) discharge of Released Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from liability for any and all claims arising out of the Action.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay Four Hundred Thirty-Five Thousand Dollars (\$435,000) and no more as the Gross Settlement Amount and to separately pay any and all Employer 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 disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 Payments from the Gross Settlement Amount. 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 Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than \$5,000 each, totaling \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that does not exceed this amount. As part of the Final Approval motion, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%, which is currently estimated to be \$145,000 and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Defendant will not oppose requests for these payments provided that the requests do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel 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 Plaintiffs' Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and

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

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$9,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$9,500, 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. Twenty-five percent (25%) 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 Parties agree that the Employee's Taxes and Required Withholdings with respect to the wage portion of the Individual Class Payment will be withheld from the Individual Class Payment. Seventy-five percent (75%) 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 \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. Calculation of Individual PAGA Payment. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's 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.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee PAGA Workweeks. Based on a review of its records as of the date of mediation, Defendant estimates approximately 330 Class Members collectively worked a total of 25,045 Workweeks, and approximately 211 Aggrieved Employees collectively worked a total of 5,988 Pay Periods.

4.2 Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Class Counsel shall not receive a copy of the Class Data or any content thereof. 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 Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fifteen (15) days after the Effective Date. At least five (5) business days prior to Defendant's deadline for funding of the Gross Settlement Amount, the Administrator shall calculate the total Employer Taxes due on the wage portion of the Individual Class Payments and issue Defendant payment/wire instructions and the amount of the Employer Taxes.

4.4 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks and/or wire payment for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, Class Representative Service Payments, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the 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 will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the 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, within ten (10) calendar days of the check void date, the Administrator shall transmit the funds represented by such checks to the State of California State Controller's Office, in the Class Member's name to be held as unclaimed property for the Class Member.

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.

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all the employer's share of payroll taxes owed on the Wage Portion of the Individual Class Payments, Class Members (including the Class Representatives) and Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Plaintiffs' General Release of All Claims. Plaintiffs and Plaintiffs' representatives, agents, attorneys, heirs, administrators, successors, and assigns, generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, whether known or unknown, suspected or unsuspected, including, but not limited to: (a) all claims that are related to Plaintiffs' respective employment with Defendant; (b) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (c) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiffs' PAGA Notices ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences after the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

- 5.1.1 **Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiffs' Release, subject to applicable carve out listed above, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

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 the Released Parties from all claims, rights, demands, liabilities, and causes of action alleged or which could have reasonably been alleged based on the facts alleged in the Operative Complaint that accrued during the Class Period (collectively "Released Class Claims"). Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims 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 PAGA civil penalties that are alleged or which reasonably could have been alleged based on the facts alleged in the Operative Complaint and the PAGA Notices to the LWDA that accrued during the PAGA Period (collectively "Released PAGA Claims").

The Settlement shall release and bar all Released PAGA Claims by or on behalf of Plaintiffs and all Aggrieved Employee during the PAGA Period, regardless of whether Plaintiffs and/or an Aggrieved Employee negotiates (cashes) their/his/her settlement checks sent pursuant to this Settlement. The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA settlement and the associated release of claims and rights under PAGA. The Parties also agree that Aggrieved Employees do not have a right to intervene in or object to the Settlement, or to require a court to receive and consider objections to the Settlement, and that Aggrieved Employees do not have a right to move to vacate a judgement entered in the Action. As such, an individual Aggrieved Employee opting out of the Class has no impact as to his/her standing and/or inclusion in the PAGA settlement assuming they/he/she qualifies as an Aggrieved Employee. Class Counsel agrees to provide timely notice of the Settlement to the LWDA as required under PAGA. Any Aggrieved Employees who submit a valid and timely Request for Exclusion are still entitled to their Individual PAGA Payment and have no right or ability to opt out of the portion of this Settlement releasing the Released PAGA Claims.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiffs will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 Plaintiffs’ Responsibilities. Plaintiffs will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)).

6.2 Responsibilities of Counsel. Class Counsel is responsible for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval Order to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees 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 fourteen (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 substantially in the form attached to this Agreement as Exhibit A. Concurrently with the mailing of the Class Notice, the Administrator will also post a copy of the Class Notice on its website at least until the date of the Final Approval Hearing. 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 Class Workweeks and PAGA Workweeks (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. Other than verifying that Defendant does not have any additional information to locate or send the Class Notice, 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 Requests for Exclusion will be extended an additional fourteen (14) days beyond the 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, Defendant, or Class Counsel are 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 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) after receipt of Class Notice, or the deadline dates in the Class Notice, whichever 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 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, though the Court may make a final determination of any dispute. 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, except by the Court.

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 of Released Class Claims, under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

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

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 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 Workweeks (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and redacted copies to Class Counsel and the Administrator's determination of the challenges. The Administrator will provide similar copies of challenges to Class Counsel after redacting Class Member identifying information, including but not limited to name, address, social security number, email address, and phone number.

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 Representative Service Payments, Class Counsel Fees Payment, and/or Class Counsel Litigation Expenses 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 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, and Class Counsel Litigation Expenses 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. If Final Approval is granted, the Administrator will post the above-listed information of interest for at least 180 days after the date of mailing Individual Class Payments and Individual PAGA Payments.

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: (a) Class Counsel and Defense Counsel containing the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"), along with copies of all valid and timely Requests for Exclusion; (b) Defense Counsel containing the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion, along with copies of all invalid or untimely Requests for Exclusion from Settlement submitted.

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

received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. The Administrator must, on a weekly basis, provide Defense Counsel the names and identifying information of Class Members whose Class Notices have been returned as undeliverable for the purpose of determining if Defendant can provide any additional information to successfully mail the Class Notice.

7.8.4 Workweek 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. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Employer’s Share of Payroll Taxes. The Administrator shall handle all tax document preparation and reporting, including W-2 and/or 1099 Forms, and any other state and federal tax forms. The Administrator shall calculate the amount of the Employer’s Taxes and shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities in a timely manner.

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

7.8.7 Posting of Final Judgment. Within ten (10) days after the Court has held a Final Approval Hearing and entered the Judgment certifying the Class for settlement purposes only and approving the Settlement, the Administrator will give notice of judgment to Class Members pursuant to California Rules of Court, rule 3.771(b) by posting a copy of said Judgment on its website at a web address to be included in the Class Notice.

7.8.8 Final Report by Settlement Administrator. Within ten (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. Class Counsel is responsible for filing the Administrator’s declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE. Defendant represented that 330 Class Members have worked 25,045 Workweeks during the Class Period. The Parties

further agree that if the final Workweeks during the Class Period, which formed the basis of the Settlement, increases by more than five (5) percent above 25,045 Workweeks (e.g., to greater than 26,297 Workweeks), Defendant at its sole discretions shall either: (1) de-escalate the Settlement so that the Class Period ends on the date that the Workweek count totals no more than 26,297; or (2) increase the Gross Settlement Amount proportionally by the workweeks worked in excess of 26,297 workweeks multiplied by the per workweek value of \$17.37.

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

10. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than two (2) calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the 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 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 Payments, 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.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and

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

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

11. 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.

12. ADDITIONAL PROVISIONS.

12.1 No Effect on Employee Benefit Plans. Neither this Agreement nor any amounts paid under the Settlement will modify any previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Settlement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language of its benefits plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement. Defendant does not consider the Individual Class Payments "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

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

Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve 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).

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

12.4 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. Nothing in this paragraph shall be construed to restrict Defendant's ability to communicate with its employees regarding the Settlement, provided that in such communication Defendant does not solicit or encourage Class Members to opt out of or object to the Settlement, or appeal from the Judgment.

12.5 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.

12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.7 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.

12.8 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 Agreement.

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

12.10 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 authorized representatives, and approved by the Court.

12.11 Authority of Signatories. The respective signatories to the Agreement represent that they are fully authorized to enter into this Agreement and bind the respective Parties to its terms and conditions.

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

12.13 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.

12.14 Attorneys' Fees and Costs. Except as otherwise specifically provided for herein, each party shall bear their own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them or arising out of the Action and shall not seek reimbursement thereof from any other party in this Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs.

12.15 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.

12.16 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.

12.17 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

12.18 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.

12.19 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.

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

To Plaintiffs:

D.LAW, INC.
David Yeremian
d.yeremian@d.law
David Keledjian
d.keledjian@d.law
David Arakelyan
d.arakelyan@d.law
Enoch J. Kim
e.kim@d.law
450 N. Brand Blvd., Ste. 840
Glendale, CA 91203
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

William C. Sung, Esq.
Tiffany L. Luu, Esq.
JUSTICE FOR WORKERS, P.C.
3600 Wilshire Blvd., Suite 1815
Los Angeles, CA 90010
Telephone: (323) 922-2000
Facsimile: (323) 922-2000
william@justiceforworkers.com
tluu@justiceforworkers.com

To Defendant:

Shaun J. Voigt
E-Mail: svoigt@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

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

12.22 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.

ON BEHALF OF PLAINTIFFS

Dated: January 24, 2025

DocuSigned by:

RASHEDA KIRBY

Rasheda Kirby

Dated: 01 / 24 / 2025, 2025

Amourafina Burton

Amoura Burton

ON BEHALF OF DEFENDANT

Trove Recommerce, Inc. fka Yerdle, Inc.

Dated: February 13, 2025

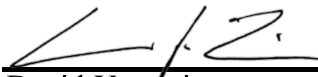

Terry Boyle (Feb 14, 2025 05:23 GMT+1)

Name: Terry Boyle
Title: CEO

APPROVED AS TO FORM:

D.LAW, INC.

Dated: January 24, 2025


David Yeremian
David Kaledjian
David Arakelyan
Enoch J. Kim
Attorneys for Plaintiff Rasheda Kirby

JUSTICE FOR WORKERS, P.C.

Dated: January 24, 2025, 2024


William C. Sung
Tiffany L. Luu
Attorneys for Plaintiff Amoura Burton

FISHER & PHILLIPS LLP

Dated: February 4, 2025, 2024


Shaun Voigt
Attorneys for Defendant

EXHIBIT A

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

Rasheda Kirby, et al. v. Trove Recommerce, Inc., et al., Case No. 23-CIV-04345

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") against Trove Recommerce, Inc. fka Yerdle, Inc. ("Trove") for alleged wage and hour violations. The Action is filed by former Trove employees Rasheda Kirby and Amoura Burton ("Plaintiffs") who allege Trove violated various provision of the California Labor Code and seeks (1) unpaid minimum and overtime wages, (2) meal and rest break premiums, (3) paid sick leave wages, and (4) business expense reimbursements; and (5) statutory penalties and other relief for a class of non-exempt or hourly employees ("Class Members") who worked for Trove during the Class Period (September 13, 2019 through June 10, 2024); and (2) civil penalties under the California Private Attorney General Act ("PAGA") for all non-exempt or hourly employees who worked for Trove during the PAGA Period (September 13, 2022 to June 10, 2024) ("Aggrieved Employees"). The proposed Settlement has two main parts: (1) a Class Settlement requiring Trove to fund Individual Class Payments, and (2) a PAGA Settlement requiring Trove to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Trove denies Plaintiffs' claims and denies any wrongdoing or liability. The Court has not ruled on the merit of Plaintiffs' claims or Trove's defenses, and the parties have agreed to the Settlement. Plaintiffs and Class Counsel believe the Settlement is fair and in the best interest of the Class Members and for those reasons are seeking final approval of the Settlement.

Based on Trove's records, and the Parties' current estimates, 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 Trove'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 Trove'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 during the Class Period or more pay periods during the PAGA 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 of the Settlement. 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 Plaintiffs and

Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Trove to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Trove.

If you worked for Trove 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 Trove.
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 Trove, 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.

Trove 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 Trove 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 **DATE**. 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. Trove 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 **DATE**. 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 Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs. Other than the

PAGA portion of this Settlement, you can object to any aspect of this Settlement. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing. The Court's Final Approval Hearing is scheduled to take place on **DATE**. 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. Written Challenges Must be Submitted by **DATE**. 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 workweeks you worked at least one day during the PAGA Period, respectively. The number of Workweeks you worked according to Trove's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by **DATE**. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former Trove employees. The Action accuses Trove of violating California labor laws by failing to pay overtime wages, minimum wages, sick leave wages, meal and rest break premium wage; failing to provide meal and rest breaks; issuing inaccurate wage statements; failing to pay wages due upon termination; and failing to reimburse necessary business expenses. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by D.Law., Inc. and Justice for Workers, P.C. ("Class Counsel") in the Action.

Trove strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws. Trove's agreement to resolve these claims via the settlement described herein is not an admission of any wrongdoing.

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

So far, the Court has made no determination whether Trove violated any laws as alleged by Plaintiffs and disputed by Trove. In the meantime, Plaintiffs and Trove 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, Plaintiffs and Trove 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, Trove does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Trove 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 whether to finally approve the Settlement.

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

Trove Will Pay \$435,000.00 as the Gross Settlement Amount (Gross Settlement). Trove 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 Payments, 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, Trove will fund the Gross Settlement not more than 30 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.

Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs 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:

- Up to \$145,000.00 (33.33% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$30,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to \$5,000.00 as a Class Representative Service Payment to each Plaintiff (\$10,000.00 total) for filing the Action, working with Class Counsel and representing the Class. Class Representative Service Payments will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payments and any Individual PAGA Payments.
- Up to \$9,500.00 to the Administrator for services administering the Settlement.
- Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Workweeks.

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

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 (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

Taxes Owed on Payments to Class Members. Plaintiffs and Trove are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages (“Wage Portion”) and 75% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Trove 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 Plaintiffs and Trove 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.

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 payment represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, 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 you or your representative setting forth your 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 Trove.

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 Trove based on the PAGA Period facts alleged in the Action.

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. Plaintiffs and Trove have agreed that, in either case, the Settlement will be void: Trove will not pay any money and Class Members will not release any claims against Trove.

Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (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.

Participating Class Members' Release. After the Judgment is final and Trove 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 Trove or related entities for wages or

associated penalties and interest based on the Class Period facts and PAGA penalties based on the PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members' Release states: "All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, rights, demands, liabilities, and causes of action alleged or which could have reasonably been alleged based on the facts alleged in the Operative Complaint that accrued during the Class Period (collectively "Released Class Claims"). Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Class Period."

Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Trove has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Trove, 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 Trove or its related entities based on the facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Release states: "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 PAGA civil penalties that are alleged or which reasonably could have been alleged based on the facts alleged in the Operative Complaint and the PAGA Notices to the LWDA that accrued during the PAGA Period (collectively "Released PAGA Claims")."

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

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.

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.

Workweek and Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of Pay Periods you worked during the PAGA Period, as recorded in Trove's records, are stated in the first page of this Notice. You have until **DATE** to challenge the number of Class Workweeks and PAGA 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 Trove's calculation of Workweeks based on Trove'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 challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Trove's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. 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 *Kirby v. Trove Recommerce*, 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 **DATE**, 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 Plaintiffs and Trove are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Payments. 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.

A Participating Class Member who disagrees with any aspect of the Agreement or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. The deadline for sending written objections to the Administrator is **DATE**. 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 *Kirby v. Trove Recommerce* and include your name, current address, telephone number, and approximate dates of employment with Trove 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 **DATE** at **TIME** in Department 24 of the Southern Court, San Mateo County Superior Court, located at 400 County Center, Redwood City, CA 94063. At the Hearing, the Court will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website (<https://sanmateo.courts.ca.gov/divisions/civil-division/civil-department-judges/jeffrey-r-finigan-civil-judge>) for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Court's website 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 Trove and Plaintiffs have promised to do under the proposed Settlement. If you have questions or would like additional information, you can telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://sanmateo.courts.ca.gov/online-services/online-case-access/odyssey-portals>) and entering the Case Number for the Action, *Kirby v. Trove Recommerce*, Case No. 23-CIV-04345.

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

Class Counsel:

D.LAW, INC. David Yeremian d.yeremian@d.law David Keledjian d.keledjian@d.law David Arakelyan d.arakelyan@d.law Enoch J. Kim	William C. Sung, Esq. Tiffany L. Luu, Esq. JUSTICE FOR WORKERS, P.C. 3600 Wilshire Blvd., Suite 1815 Los Angeles, CA 90010 Telephone: (323) 922-2000 Facsimile: (323) 922-2000 william@justiceforworkers.com
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e.kim@d.law 450 N. Brand Blvd., Ste. 840 Glendale, CA 91203 Telephone: (818) 962-6465 Facsimile: (818) 962-6469	tluu@justiceforworkers.com
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Settlement Administrator: Phoenix Settlement Administrators

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

VIA ON-LINE SUBMISSION AND MAIL:

<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

Trove Recommerce, Inc.

Andrew Ruben, Agent for Service of Process
240 Valley Drive
Brisbane, CA 94005
Certified Mail Tracking Number: 9414- 8112- 0620- 3016- 9158- 18

Trove, Inc.

360 Kings Hwy
Hauppauge, NY 11787
Certified Mail Tracking Number: 9414- 8112- 0620- 3016- 9109- 74

Yerdle, Inc.

Andrew Ruben, Agent for Service of Process
3775 Bayshore Blvd.
Brisbane, CA 94005
Certified Mail Tracking Number: 9414- 8112- 0620- 3016- 9181- 47

LWDA Case No.: LWDA-CM-981426-23

Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
Rasheda K. Kirby v. Trove Recommerce, Inc., et al.

Gentlepersons:

This office represents Plaintiff Rasheda K. Kirby (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 226.8, 432.5, 510, 512, 515, 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”). Unless specified below, Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated, Aggrieved Employees, and the State of California, against Defendants, Trove Recommerce, Inc., Trove, Inc., Yerdle, Inc., 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 Plaintiff’s Class Action Complaint, which is attached hereto and incorporated by reference herein.



The Complaint is being concurrently filed in San Mateo 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 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 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"). However, with regard to the allegations under Labor Code §§ 226(a)(8), 432.5, and 1198 (pertaining to workplace temperature) only, Plaintiff expands the scope and definition of the Aggrieved Employees to all employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, regarding their uncompensated pre-shift duties, Aggrieved Employees were systemically required to arrive to work early and undergo mandatory COVID-19 screening measures, including temperature checks as well as having to complete questionnaires, prior to being allowed to clock in for work. Then, Aggrieved Employees were required to put away their personal items that they brought to work. Thereafter, Aggrieved Employees were required to spend time waiting for the time-clock kiosk to open.

Additionally, Aggrieved Employees were required to perform work-related tasks during their unpaid meal breaks, when such breaks were taken, including having to keep and monitor their work-issued radios during unpaid meal periods. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were not relieved of all duties, and required to perform work-related tasks during their unpaid meal periods, including having to keep and monitor their work-issued radios. In fact, Aggrieved Employees' meal periods were regularly



either denied altogether, under 30-minutes in length, or taken after the completion of their fifth hour of work. Additionally, the uncompensated pre-shift duties, discussed herein, further delayed Aggrieved Employees' meal periods, to commence after the completion of their fifth hour of work. Moreover, Aggrieved Employees were prohibited from leaving the work premises during meal periods.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; and (2) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest periods in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring putative class members to continue working through their rest breaks due to the excessive workload, as well as requiring Aggrieved Employees to keep and monitor their work-issued radios during meal periods and rest breaks; and (4) Defendants' policy and practice of requiring putative class members to remain on the premises during rest breaks. Additionally, the uncompensated working hours, discussed herein, further delayed the commencement the rest breaks to which Aggrieved Employees were entitled, in violation of California Law. Furthermore, Defendants failed to pay Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and rest period denied.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees the requisite sick time pay in accordance with California Law, specifically at the employees' applicable regular rate of pay. Specifically, the sick pay paid Aggrieved Employees did not account for the performance-based non-discretionary bonuses, which were never factored into the rate upon which sick pay accrued and paid.

Aggrieved Employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing." Additionally, the wage statements issued to Aggrieved Employees were not recorded in "ink or other indelible form."

Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked by the employee" were not accurately reflected in that: all hours worked, including overtime, were not



included.

Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

Furthermore, Defendants failed to provide Aggrieved Employees with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff’s and Aggrieved Employees’ wage statement were only provided in electronic format in violation of Labor Code § 226.

Finally, the wage statements issued to Aggrieved Employees failed to state the full and correct name and address of the legal entity that is the employer as required by Labor Code § 226(a)(8).

Defendants failed to pay Aggrieved Employees with an order, check, draft, note, memorandum, or other acknowledgment of indebtedness that was payable on demand, without discount at some established place of business in the state. Defendants' issued pay cards to Aggrieved Employees for wages earned. These pay cards were useable for a fee and did not have a provision for use and payment in California at no cost to the employee. Therefore, Defendants failed to provide Aggrieved Employees with checks, drafts, notes or other acknowledgements of indebtedness that were payable on demand without discount as required by Labor Code § 212, which required Aggrieved Employees to incur fees to use, was not fully cashable, and not usable at all financial institutions.

Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant’s employ. Specifically, Aggrieved Employees were required to pay purchase cellular phones and cellular phone service, necessary to perform their duties under Defendants’ employ. Plaintiff and Aggrieved Employees were not reimbursed for these necessary work-related expenses.

Next, pursuant to the Occupational Safety and Health Administration, employers must keep the thermostat between 68 and 78 degrees Fahrenheit. California Wage Order 7 states: “the temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. Where the nature of the employment requires a temperature of less than 60 degrees Fahrenheit, a heated room shall be provided to which employees may retire for warm, and such room shall be maintained at not less than 68 degrees Fahrenheit. A temperature of not less than 68 degrees Fahrenheit shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.” Here, the temperature in Defendants’ workspace was well above what is legally allowed under California Law.

Finally, Defendants had a common policy and practice of requiring Aggrieved Employees to sign



an agreement, as a condition of employment, which violates California law. Specifically, as a condition of their employment, Aggrieved Employees were required to sign an unlawful non-compete agreement which prohibited Aggrieved Employees from seeking or engaging in lawful and gainful employment.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:¹

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.

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.



All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked at the proper rates of pay. Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, regarding their uncompensated pre-shift duties, Aggrieved Employees were systemically required to arrive to work early and undergo mandatory COVID-19 screening measures, including temperature checks as well as having to complete questionnaires, prior to being allowed to clock in for work. Then, Aggrieved Employees were required to put away their personal items that they brought to work. Thereafter, Aggrieved Employees were required to spend time waiting for the time-clock kiosk to open.

Additionally, Aggrieved Employees were required to perform work-related tasks during their unpaid meal breaks, when such breaks were taken, including having to keep and monitor their work-issued radios during unpaid meal periods. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

Defendants have the ability to pay minimum and overtime wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). 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, 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. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve (12) 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 § 510 and applicable Wage Orders.

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 8, 10, and 12 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 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 had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were not relieved of all duties, and required to perform work-related tasks during their unpaid meal periods, including having to keep and monitor their work-issued radios. In fact, Aggrieved Employees' meal periods were regularly either denied altogether, under 30-minutes in length, or taken after the completion of their fifth hour of work. Additionally, the uncompensated pre-shift duties, discussed herein, further delayed Aggrieved Employees' meal periods, to commence after the completion of their fifth hour of work. Moreover, Aggrieved Employees were prohibited from leaving the work premises during meal periods.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; and (2) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Aggrieved Employees of their rest period rights;



(3) Defendants’ policy and practice of requiring putative class members to continue working through their rest breaks due to the excessive workload, as well as requiring Aggrieved Employees to keep and monitor their work-issued radios during meal periods and rest breaks; and (4) Defendants’ policy and practice of requiring putative class members to remain on the premises during rest breaks. Additionally, the uncompensated working hours, discussed herein, further delayed the commencement the rest breaks to which Aggrieved Employees were entitled, in violation of California Law.

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 Pay Proper Sick Pay in Violation of Labor Code § 246

Labor Code Section 246 affords an employee “who works in California for 30 or more days within a year from the commencement of employment [] paid sick days . . . of not less than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.”

Additionally, Subsection (l) of Section 246 provides:

For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees the requisite sick time pay in accordance with California Law, at the employees’ applicable regular rates of pay. Specifically, the sick pay paid to Aggrieved Employees did not account for the performance-based non-discretionary bonuses, which were never factored into the rate upon which sick pay was accrued and paid.



Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 246, 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 Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

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

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

Additionally, for the purposes of Subsection (a)(8), Plaintiff seeks to expand the scope of the Aggrieved Employees she seeks to represent to extend to all individuals employed by Defendants during the applicable period. The wage statements issued to Aggrieved Employees failed to state the full and correct name and address of the legal entity that is the employer as required by Labor Code § 226(a)(8).

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 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, 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, 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, off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2),



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

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

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, 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 the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, 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 have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Aggrieved Employees



were required to pay purchase cellular phones and cellular phone service, necessary to perform their duties under Defendants' employment. Aggrieved Employees were not reimbursed for these necessary work-related expenses in violation of Labor Code § 2802.

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

Failure to Reduce Excessive Heat to a Degree Providing Reasonable Comfort

The IWC Wage Order requires employers to maintain the temperature in each work area providing reasonable comfort consistent with industry wide standards for the nature of the process and the work performed. The IWC Wage Order states: "the temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort."

As addressed in detail above, Defendants failed to reduce excessive heat to a degree providing employees with reasonable comfort. The temperature in Defendants' workspace was well above what is legally allowed constituting violations of Labor Code § 1198 and § 2699(f)(2).

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to reduce excessive heat to a degree providing reasonable comfort under the IWC Wage Order and seeking all civil penalties available and applicable under Labor Code and IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Mandatory and Unlawful Non-Compete Agreements

California Business and Professions Code provides, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." (Bus. & Prof. Code, § 16600.)

Additionally, Labor Code § 432.5 states:

No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.



Defendants had a common policy and practice of requiring Aggrieved Employees to sign an agreement, as a condition of employment, which violates California law. Specifically, as a condition of their employment, Aggrieved Employees were required to sign an unlawful non-compete agreement which prohibited Aggrieved Employees from seeking or engaging in lawful and gainful employment in violation of Business and Professions Code § 16600. As such, as this unlawful agreement was a condition of Aggrieved Employees' employment, Defendants have violated Labor Code § 432.5.

Plaintiff is seeking all civil penalties available and applicable under Labor Code and IWC Wage Orders, on behalf of all Aggrieved Employees, as well as attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to 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 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.

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, 212, 213, 226, 226.3, 226.7, 246, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, et seq., and 2802, including as follows:

(a) **Wage Claims:** For failure to provide 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, failure to pay proper reporting time and sick pay under Labor Code §§ 246, 432.5, 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 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 the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for 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);

(g) 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 Defendants and joint employers. To prevent the violations described in the Complaint and

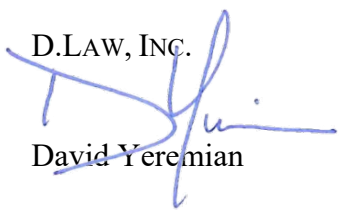


herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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 the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.



David Yerejian

Cc: Trove Recommerce, Inc., Trove, Inc., Yerdle, Inc., by Certified Mail

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

Rasheda K. Kirby, on behalf of herself
and all others similarly situated, and the
general public,

Plaintiff,

v.

TROVE RECOMMERCE, INC., a Delaware
corporation; TROVE, INC., a business entity
of unknown form; YERDLE, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.:

CLASS ACTION COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Proper Sick Pay (Lab. Code § 246);
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
7. Failure to Indemnify (Lab. Code § 2802); and
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff RASHEDA K. KIRBY (“Plaintiff”), on behalf of herself, all others similarly
2 situated, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants TROVE RECOMMERCE, INC.,
5 a Delaware corporation; TROVE, INC., a business entity of unknown form; YERDLE, INC., a
6 California corporation; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”)
7 for alleged violations of the California Labor Code and California Business and Professions Code.
8 As set forth below, Plaintiff alleges that Defendants have:

- 9 a. failed to pay them overtime wages at the correct rate;
- 10 b. failed to pay them double time wages at the correct rate;
- 11 c. failed to pay them overtime and/or double time wages by failing to include all
12 applicable remuneration in calculating the regular rate of pay;
- 13 d. failed to provide them with meal periods;
- 14 e. failed to provide them with rest periods;
- 15 f. failed to pay them premium wages for missed meal and rest periods;
- 16 g. failed to pay them proper sick time pay;
- 17 h. failed to provide them with accurate written wage statements;
- 18 i. failed to reimburse them with necessary business expenditures; and
- 19 j. failed to pay them all of their final wages following separation of employment.

20 Based on these alleged Labor Code violations, Plaintiff now brings this class action to recover
21 unpaid wages, liquidated damages, penalties, restitution and related relief on behalf of herself, all
22 others similarly situated, and the general public.

23 **JURISDICTION AND VENUE**

24 2. This Court has subject matter jurisdiction to hear this case because the monetary
25 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
26 of the Superior Court of the State of California.

27 3. Venue is proper in the County of San Mateo pursuant to Code of Civil Procedure
28 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions

1 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
2 maintains offices, transacts business and/or has an agent therein.

3 4. Venue is proper in San Mateo County because Defendants' have at all times alleged
4 herein, conducted business in San Mateo County, and throughout California. As such, venue is
5 proper in any county in California.

6 **PARTIES**

7 5. Plaintiff RASHEDA K. KIRBY is, and at all relevant times mentioned herein, an
8 individual residing in the State of California.

9 6. Plaintiff is informed and believes, and thereupon alleges that Defendant TROVE
10 RECOMMERCE, INC., is, and at all relevant times mentioned herein, a Delaware corporation doing
11 business in the State of California.

12 7. Plaintiff is informed and believes, and thereupon alleges that Defendant TROVE,
13 INC., is, and at all relevant times mentioned herein, a business entity of unknown form doing business
14 in the State of California.

15 8. Plaintiff is informed and believes, and thereupon alleges that Defendant YERDLE,
16 INC., is, and at all relevant times mentioned herein, a California corporation doing business in the
17 State of California.

18 9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
19 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
20 will amend this Complaint to allege the true names and capacities of the DOE defendants when
21 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
22 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
23 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
24 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
25 defendants when ascertained.

26 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
27 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
28 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some

1 or all of the other defendants, and in doing the things alleged herein, were acting within the course
2 and scope of such relationship and with the full knowledge, consent and ratification by such other
3 defendants.

4 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
5 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
6 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
7 and omissions alleged herein.

8 12. This action has been brought and may be maintained as a class action pursuant to Code
9 of Civil Procedure section 382 because there is a well-defined community of interest among the
10 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
11 unaware of any difficulties likely to be encountered in managing this case as a class action.

12 13. **Relevant Time Period:** The relevant time period is defined as the time period
13 beginning four years prior to the filing of this action until judgment is entered.

- 14 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
15 separately, and/or any staffing agencies and/or any other third parties in hourly or
16 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action (“Hourly Employee
Class”).
- 17 b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in
18 a shift in excess of five hours during the four years prior to the filing of this action
and ending on the date that final judgment is entered in this action.
- 19 c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a
20 shift of at least three and one-half (3.5) hours the four years prior to the filing of
this action and ending on the date that final judgment is entered in this action.
- 21 d. **Sick-Pay Class:** All **Hourly Employee Class** members, worked for more than
22 30 days for Defendants, and were not paid for at least one hour of sick time for
23 every 30 hours of work thereafter, or at least 3 days of sick time for every 12-
month period of employment, at the proper rate of pay.
- 24 e. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
25 separated from their employment with Defendants during the period beginning
three years before the filing of this action and ending when final judgment is
entered.
- 26 f. **Wage Statement Class:** All persons employed by Defendants in California during
27 the period beginning one year before the filing of this action and ending when final
judgment is entered.
- 28 g. **Expense Reimbursement Class:** All persons employed by Defendants in

California who incurred business expenses during the **Relevant Time Period**.

- h. **UCL Class**: All **Hourly Employee Class** and **Expense Reimbursement Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

14. **Reservation of Rights**: Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

15. **Numerosity**: The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

16. **Commonality and Predominance**: Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- a. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- b. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- c. Whether Defendants failed to pay premium wages to class members when they have not been provided with meal and rest periods at the appropriate rates of pay;
- d. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- e. Whether Defendants fails to pay proper sick time pay;
- f. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- g. Whether Defendants applied policies or practices that result in late and/or

incomplete final wage payments;

h. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;

i. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203; and

j. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

17. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent

1 or contradictory judgments inherent in individual litigation.

2 **GENERAL ALLEGATIONS**

3 21. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
4 statutory periods.

5 22. Defendants had a common policy and practice of systemically failing to pay Plaintiff
6 and Class members proper wages and overtime for all hours worked, at the proper rates of pay.

7 23. Plaintiff and Class Members were also consistently required to perform work, off-the-
8 clock, for which they were not paid wages. Specifically, regarding their uncompensated pre-shift
9 duties, Plaintiff and Class Members were systemically required to arrive to work early and undergo
10 mandatory COVID-19 screening measures, including temperature checks as well as having to
11 complete questionnaires, prior to being allowed to clock in for work. Then, Plaintiff and Class
12 Members were required to put away their personal items that they brought to work. Finally, Plaintiff
13 and Class Members were then required to spend time waiting for the time-clock kiosk to open in order
14 to clock in for work.

15 24. Additionally, Plaintiff and Class Members were required to perform work-related
16 tasks during their unpaid meal periods, when such meal periods were taken. The forgoing and
17 uncompensated working time was under the direction and control of Defendants, for which no wages
18 were paid.

19 25. This uncompensated time caused Plaintiff and Class Members to work in excess of
20 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff
21 and Class Members to minimum and overtime wages, which they were systemically denied.

22 26. Defendants had a common policy and practice of systemically denying Plaintiff and
23 Class Members the opportunity to take meal periods in compliance with the California Law.
24 Specifically, due to understaffing and heavy workloads, Plaintiff and Class Members were not
25 relieved of all duties, and required to perform work-relates tasks during their unpaid meal periods,
26 which were systemically denied. In fact, Plaintiff and Class Members' meal periods were regularly
27 either denied altogether, under 30-minutes in length, or taken after the completion of their fifth hour
28 of work. Additionally, the uncompensated pre-shift duties, discussed herein, further delayed Plaintiff

1 and Class Members' meal periods, to commence after the completion of their fifth hour of work.
2 Moreover, Plaintiff and Class Members were prohibited from leaving the work premises during meal
3 periods.

4 27. Plaintiff and Class Members were not provided with meal periods of at least thirty (30)
5 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
6 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
7 take their meal periods, or that advised Class Members of their meal and rest period rights; and (3)
8 Defendants' practice of requiring putative class members to continue working through their meal and
9 rest periods due to the excessive workload.

10 28. Defendants had a common policy and practice of systemically denying Plaintiff and
11 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiff
12 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
13 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest
14 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2)
15 no formal compliant written rest period policy that encouraged employees to take their rest periods,
16 or that properly advised Plaintiff and Class Members of their rest period rights; (3) Defendants' policy
17 and practice of requiring putative class members to continue working through their rest breaks due to
18 the excessive workload; and (4) Defendants' policy and practice of requiring putative class members
19 to remain on the premises during rest breaks. Additionally, the uncompensated working hours,
20 discussed herein, further delayed the commencement the rest breaks to which Plaintiff and Class
21 Members were entitled, in violation of California Law.

22 29. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
23 wages at their appropriate regular rates of pay for each meal and rest period denied.

24 30. Defendants had a common policy and practice of systemically failing to pay Plaintiff
25 and Class Members the requisite sick time pay in accordance with California Law, at the employees'
26 applicable regular rates of pay. Specifically, the sick pay paid Plaintiff and Class Members did not
27 account for the performance-based non-discretionary bonuses, which were never factored into the
28 rate upon which sick pay was accrued and paid.

1 31. Plaintiff and Class Members were not provided with accurate wage statements as
2 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
3 statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or
4 separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”
5 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in “ink
6 or other indelible form.”

7 32. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
8 earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

9 33. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
10 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
11 not included.

12 34. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
13 were not accurately reflected in that: all hours worked, including overtime, were not included.

14 35. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
17 overtime, were not included.

18 36. Additionally, the wage statements issued to Plaintiff and Class Members failed to
19 include the “name and address of the legal entity that is the employer” as required by Labor Code §
20 226(a)(8).

21 37. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
22 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
23 Plaintiff’s and Class Members’ wage statement were only provided in electronic format in violation
24 of Labor Code § 226.

25 38. Plaintiff and Class Members were not reimbursed for business expenses incurred in
26 executing their duties under Defendant’s employ. Specifically, Plaintiff and Class Members were
27 required to pay purchase cellular phones and cellular phone service, necessary to perform their duties
28 under Defendants’ employ. Plaintiff and Class members were not reimbursed for these necessary

1 work-related expenses.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS**

4 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

5 **(Plaintiff and Meal Period Sub-Class)**

6 39. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
7 fully alleged herein.

8 40. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
9 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
10 Code and the applicable Industrial Welfare Commission Wage Order.

11 41. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
12 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
13 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
14 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
15 minutes for each work period of ten hours.

16 42. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
17 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
18 during required meal periods and require employers to pay non-exempt employees an hour of
19 premium wages on each workday that the employee is not provided with the required meal period.

20 43. Compensation for missed meal periods constitutes wages within the meaning of Labor
21 Code section 200.

22 44. Labor Code section 1198 makes it unlawful to employ a person under conditions that
23 violate the applicable Wage Order.

24 45. Section 11 of the applicable Wage Order states:

25 “No employer shall employ any person for a work period of more than five (5) hours
26 without a meal period of not less than 30 minutes, except that when a work period of
27 not more than six (6) hours will complete the day’s work the meal period may be
28 waived by mutual consent of the employer and employee. Unless the employee is
relieved of all duty during a 30 minute meal period, the meal period shall be considered
an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an employee from being

1 relieved of all duty and when by written agreement between the parties an on-the-job
2 paid meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

3 46. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
4 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
5 members were not subject to valid on-duty meal period agreements with Defendants.

6 47. Plaintiff alleges that, at all relevant times during the applicable limitations period,
7 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
8 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
9 hour work period, as required by Labor Code section 512 and the applicable Wage Order.
10 Specifically, due to understaffing and heavy workloads, Plaintiff and **Meal Period Sub-Class**
11 members were not relieved of all duties, and required to perform work-relates tasks during their
12 unpaid meal periods, which were systemically denied. In fact, Plaintiff and **Meal Period Sub-Class**
13 members’ meal periods were regularly either denied altogether, under 30-minutes in length, or taken
14 after the completion of their fifth hour of work. Additionally, the uncompensated pre-shift duties,
15 discussed herein, further delayed Plaintiff and **Meal Period Sub-Class** members’ meal periods, to
16 commence after the completion of their fifth hour of work. Moreover, Plaintiff and **Meal Period Sub-**
17 **Class** members’ were prohibited from leaving the work premises during meal periods.

18 48. Plaintiff alleges that, at all relevant times during the applicable limitations period,
19 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
20 **Class** members when they worked five (5) hours without clocking out for any meal period.

21 49. Plaintiff alleges that, at all relevant times during the applicable limitations period,
22 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
23 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
24 them premium wages as required by Labor Code 512 and the applicable Wage Order.

25 50. Moreover, Defendants written policies fail to inform Meal period Class Members of
26 their meal period rights under the Labor Code and applicable Wage Orders.

27 51. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
28 **Class** members additional premium wages, and/or were not paid premium wages at the employees’

1 regular rates of pay when required meal periods were not provided.

2 52. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
3 herself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
4 thereon, and costs of suit.

5 53. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
6 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the
7 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REST PERIODS**

10 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

11 **(Plaintiff and Rest Period Sub-Class)**

12 54. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
13 herein.

14 55. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
15 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
16 Code and the applicable Wage Order.

17 56. Section 12 of the applicable Wage Order imposes an affirmative obligation on
18 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
19 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
20 middle of each work period insofar as practicable.

21 57. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
22 employers from requiring employees to work during required rest periods and require employers to
23 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
24 workday that the employee is not provided with the required rest period(s).

25 58. Compensation for missed rest periods constitutes wages within the meaning of Labor
26 Code section 200.

27 59. Labor Code section 1198 makes it unlawful to employ a person under conditions that
28 violate the Wage Order.

1 60. Plaintiff alleges that, at all relevant times during the applicable limitations period,
2 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
3 with net rest period of at least ten uninterrupted minutes for each four hour work period, or major
4 fraction thereof, as required by the applicable Wage Order.

5 61. Defendants had a common policy and practice of systemically denying Plaintiff and
6 **Rest Period Sub-Class** members the opportunity to take rest periods in compliance with the
7 California Law. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods
8 of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
9 Defendants' policy of not scheduling each rest period as part of each work shift, including second
10 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
11 encouraged employees to take their rest periods, or that properly advised Plaintiff and **Rest Period**
12 **Sub-Class** members of their rest period rights; (3) Defendants' policy and practice of requiring
13 putative class members to continue working through their rest breaks due to the excessive workload;
14 and (4) Defendants' policy and practice of requiring **Rest Period Sub-Class** members to remain on
15 the premises during rest breaks. Additionally, the uncompensated working hours, discussed herein,
16 further delayed the commencement the rest breaks to which Plaintiff and **Rest Period Sub-Class**
17 members were entitled, in violation of California Law.

18 62. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
19 members additional premium wages when required rest periods were not provided.

20 63. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself
21 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
22 costs of suit.

23 64. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
24 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
25 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

3 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

4 **(Plaintiff and Hourly Employee Class)**

5 65. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 66. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
8 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
9 applicable Wage Order.

10 67. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
11 which an employee is subject to the control of the employer, and includes all the time the employee
12 is suffered or permitted to work, whether or not required to do so.”

13 68. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
14 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
15 that an employer has actual or constructive knowledge that employees are working.

16 69. Labor Code section 1194 invalidates any agreement between an employer and an
17 employee to work for less than the minimum or overtime wage required under the applicable Wage
18 Order.

19 70. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
20 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
21 to the underlying unpaid minimum wages and interest thereon.

22 71. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
23 than the minimum wage required under the applicable Wage Order for all hours worked during a
24 payroll period.

25 72. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
26 person acting either individually or as an officer, agent or employee of another person, to pay an
27 employee, or cause an employee to be paid, less than the applicable minimum wage.

28 73. Labor Code section 1198 makes it unlawful for employers to employ employees under

1 conditions that violate the applicable Wage Order.

2 74. Labor Code section 204 requires employers to pay non-exempt employees their earned
3 wages for the normal work period at least twice during each calendar month on days the employer
4 designates in advance and to pay non-exempt employees their earned wages for labor performed in
5 excess of the normal work period by no later than the next regular payday.

6 75. Labor Code section 223 makes it unlawful for employers to pay their employees lower
7 wages than required by contract or statute while purporting to pay them legal wages.

8 76. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
9 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
10 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
11 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
12 consecutive day of one workweek.

13 77. Labor Code section 510 and Section 3 of the applicable Wage Order also require
14 employers to pay non-exempt employees overtime wages of no less than two times their respective
15 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
16 worked in excess of eight hours on a seventh consecutive workday during the workweek.

17 78. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
18 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
19 working conditions and compensation arrangements.

20 79. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
21 **Employee Class** members for all time worked, including but not limited to, overtime hours at
22 statutory and/or agreed rates.

23 80. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
24 overtime for all hours worked, at the proper rates of pay. Specifically, regarding their uncompensated
25 pre-shift duties, Plaintiff and **Hourly Employee Class** members were systemically required to arrive
26 to work early and undergo mandatory COVID-19 screening measures, including temperature checks
27 as well as having to complete questionnaires, prior to being allowed to clock in for work. Then,
28 Plaintiff and **Hourly Employee Class** members were required to put away their personal items that

1 they brought to work. Finally, Plaintiff and **Hourly Employee Class** members were required to spend
2 time waiting for the time-clock kiosk to open.

3 81. Additionally, Plaintiff and **Hourly Employee Class** members were required to
4 perform work-related tasks during their unpaid meal breaks, when such breaks were taken. The
5 forgoing and uncompensated working time was under the direction and control of Defendants, for
6 which no wages were paid.

7 82. The forgoing and uncompensated working time was under the direction and control
8 of Defendants, for which no wages were paid.

9 83. This uncompensated time caused Plaintiff and **Hourly Employee Class** members to
10 work in excess of eight (8), ten (10), and twelve (12) hours a day and/or forty (40) hours a week,
11 entitling Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which
12 they were systemically denied.

13 84. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
14 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
15 full amount of wages earned during each pay period during the applicable limitations period,
16 including overtime wages.

17 85. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
18 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and
19 overtime wages, interest thereon and costs of suit.

20 86. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
21 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
22 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY PROPER SICK PAY**

3 **(Lab. Code § 246)**

4 **(Plaintiff and Sick Pay Class)**

5 87. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
6 full herein.

7 88. Labor Code Section 246 affords an employee “who works in California for 30 or
8 more days within a year from the commencement of employment [] paid sick days . . . of not less
9 than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid
10 time off by the 120th calendar day of employment or each calendar year, or in each 12-month
11 period.”

12 89. Additionally, Subsection (l) of Section 246 provides:

13 For the purposes of this section, an employer shall calculate paid sick leave
14 using any of the following calculations:

15 (1) Paid sick time for nonexempt employees shall be calculated in the same
16 manner as the regular rate of pay for the workweek in which the employee
17 uses paid sick time, whether or not the employee actually works overtime
18 in that workweek.

19 90. Defendants had a common policy and practice of systemically failing to pay Plaintiff
20 and **Sick Pay Class** Members the requisite sick time pay in accordance with California Law, at the
21 employees’ applicable regular rates of pay. Specifically, the sick pay paid to Plaintiff and **Sick Pay**
22 **Class** Members did not account for the performance-based non-discretionary bonuses, which were
23 never factored into the rate upon which sick pay was accrued and paid.

24 91. Therefore, **Sick Pay Class** Members are owed the unpaid balance of said wages
25 pursuant to the Wage order according to proof at trial, interest pursuant to Labor Code §§ 218.6 and
26 1194(a), Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties
27 pursuant to Labor Code § 558(a).

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 92. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 93. Labor Code section 226(a) states:

8 “An employer, semimonthly or at the time of each payment of wages, shall furnish to
9 his or her employee, either as a detachable part of the check, draft, or voucher paying
10 the employee’s wages, or separately if wages are paid by personal check or cash, an
11 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
12 worked by the employee, except as provided in subdivision (j), (3) the number of
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
14 rate basis, (4) all deductions, provided that all deductions made on written orders of
15 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
16 inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number or an
18 employee identification number other than a social security number, (8) the name and
19 address of the legal entity that is the employer and, if the employer is a farm labor
20 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
21 legal entity that secured the services of the employer, and (9) all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at
23 each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
24 temporary services employer as defined in Section 201.3, the rate of pay and the total
25 hours worked for each temporary services assignment. The deductions made from
26 payment of wages shall be recorded in ink or other indelible form, properly dated,
27 showing the month, day, and year, and a copy of the statement and the record of the
28 deductions shall be kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For purposes of
this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.”

94. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
“detachable part of the check” provision and the “accurate itemized statement in writing” provision
of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
retains the right to elect to receive a written paper stub or record and that those who are provided with
electronic wage statements retain the ability to easily access the information and convert the electronic
statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

95. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Class** members with written

1 wage statements as described above. Additionally, the wage statements issued to class members
2 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
3 above.

4 96. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
5 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
6 Opinion Letters. Plaintiff's and **Wage Statement Class** members' wage statement were only
7 provided in electronic format in violation of Labor Code § 226.

8 97. Additionally, the wage statements issued to Plaintiff and Class Members failed to
9 include the "name and address of the legal entity that is the employer" as required by Labor Code §
10 226(a)(8).

11 98. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
12 **Statement Class** members with accurate written wage statements were intentional in that Defendants
13 have the ability to provide them with accurate wage statements but have intentionally provided them
14 with written wage statements that Defendants have known do not comply with Labor Code section
15 226(a).

16 99. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
17 Defendants have violated their legal rights to receive accurate wage statements and have misled them
18 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
19 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
20 discovery and mathematical computations to determine the amount of wages owed, has caused
21 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
22 submission of inaccurate information about wages and deductions to federal and state government
23 agencies.

24 100. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
25 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
26 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
27 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
28 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

3 **(Lab. Code §§ 201-203)**

4 **(Plaintiff and Waiting Time Penalties Sub-Class)**

5 101. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 102. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
8 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
9 earned and unpaid before termination or resignation.

10 103. At all relevant times, pursuant to Labor Code section 201, employees who have been
11 discharged have been entitled to payment of all final wages immediately upon termination.

12 104. At all relevant times, pursuant to Labor Code section 202, employees who have
13 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
14 payment of all final wages at the time of resignation.

15 105. Plaintiff is informed and believes that, at all relevant time during the applicable
16 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
17 members all of their final wages in accordance with the Labor Code.

18 106. Plaintiff is informed and believes that, at all relevant times during the applicable
19 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
20 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
21 sections 201 or 202 by failing to timely pay them all final wages.

22 107. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
23 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful
24 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
25 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
26 requirements.

27 108. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
28 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their

1 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

2 109. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
3 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
4 **Class** members, seek awards of reasonable attorneys' fees and costs.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY**

7 **(Lab. Code § 2802)**

8 **(Plaintiff and Reimbursement Class)**

9 110. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
10 herein.

11 111. Labor Code section 2802(a) states:

12 "An employer shall indemnify his or her employee for all necessary expenditures or
13 losses incurred by the employee in direct consequence of the discharge of his or her
14 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful."

15 112. Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for
16 business expenses incurred in executing their duties under Defendant's employ. Specifically,
17 Specifically, Plaintiff and **Expense Reimbursement Class Members** were required to pay purchase
18 cellular phones and cellular phone service all necessary to perform, their duties under Defendants'
19 employ. Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for these
20 necessary work-related expenses.

21 113. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
22 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
23 Complaint and until the date of entry of judgment.

24 114. Plaintiff, on behalf of herself, and **Expense Reimbursement Class** members, seeks
25 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
26 pursuant to Code of Civil Procedure section 1021.5.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

4 **(Plaintiff and UCL Class)**

5 115. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 116. Business and Professions Code section 17200 defines “unfair competition” to include
8 any unlawful business practice.

9 117. Business and Professions Code section 17203-17204 allow a person who has lost
10 money or property as a result of unfair competition to bring a class action in accordance with Code
11 of Civil Procedure section 382 to recover money or property that may have been acquired from
12 similarly situated persons by means of unfair competition.

13 118. California law requires employers to pay hourly, non-exempt employees for all hours
14 they are permitted or suffered to work, including hours that the employer knows or reasonable should
15 know that employees have worked.

16 119. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,
17 SECOND, THIRD, FOURTH, and SEVENTH causes of action herein.

18 120. Plaintiff lost money or property as a result of the aforementioned unfair competition.

19 121. Defendants have or may have acquired money by means of unfair competition.

20 122. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
21 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
22 226.6, 226.7, 246, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
23 2802 as well as applicable Wage Orders, which make it a misdemeanor to commit the violations
24 alleged herein.

25 123. Defendants have committed criminal conduct through their policies and practices of,
26 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
27 employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay;
28 proper sick time pay; reporting time pay; and reimbursement for necessary business expenditures.

1 124. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
2 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
3 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
4 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
5 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
6 similarly situated persons in a class action proceeding.

7 125. As a result of Defendants' violations of the Labor Code during the applicable
8 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
9 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

10 126. Plaintiff is informed and believes that other similarly situated persons have been
11 subject to the same unlawful policies or practices of Defendants.

12 127. Due to the unfair and unlawful business practices in violation of the Labor Code,
13 Defendants have gained a competitive advantage over other comparable companies doing business in
14 the State of California that comply with their legal obligations.

15 128. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
16 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
17 or is considered unlawful under any other state or federal law.

18 129. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
19 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
20 Defendants, and each of them, and their agents and employees, from further violations of the Labor
21 Code and applicable Wage Orders.

22 130. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
23 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
24 Defendants, and each of them, and their agents and employees, from further violations of the Labor
25 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
26 order permanently enjoining Defendants, and each of them, and their respective agents and
27 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
28 Wage Orders.

131. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

132. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

133. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair business practices.

134. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages and overtime;
- e. Actual damages;
- f. Liquidated damages;
- g. Unreimbursed expenses;
- h. Restitution;
- i. Declaratory relief;
- j. Pre-judgment interest;
- k. Statutory penalties;

- 1 l. Costs of suit;
2 m. Reasonable attorneys' fees; and
3 n. Such other relief as the Court deems just and proper.
4

5 Dated: September 13, 2023

D.LAW, INC.

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7 

8 _____
Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
RASHEDA K. KIRBY, and the putative class

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby
13 demands a jury trial on all issues so triable.
14

15 Dated: September 13, 2023

D.LAW, INC.

16
17 

18 _____
Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
RASHEDA K. KIRBY, and the putative class
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fax: (310) 510-6429

August 22, 2023

VIA PAGA ONLINE FILING ONLY:

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

VIA U.S. CERTIFIED MAIL:

Andrew Ruben
Agent for Service of Process for:
Trove Recommerce, Inc.
240 Valley Drive
Brisbane, CA 94005

Trove Recommerce, Inc.
Attn: Human Resources Department / Legal
Department
240 Valley Drive
Brisbane, CA 94005

Trove Inc.
Attn: Human Resources / Legal Department
240 Valley Drive
Brisbane, CA 94005

The Corporation Trust Company
Agent for Service of Process for:
Trove, Inc.
Corporation Trust Center
1209 Orange St
Wilmington, DE 19801

Corporation Service Company
Agent for Service of Process for
Trove Inc.
251 Little Falls Drive
Wilmington, DE 19808

Incorporating Services, Ltd.
Agent for Service of Process for:
Trove Inc.
3500 S Dupont Hwy
Dover, DE 19901

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Trove Recommerce, Inc.;
Trove, Inc.; Trove Inc.; and Trove Inc.
Date: August 22, 2023
Subject: *Amoura Burton v. Trove Recommerce, Inc., et. al.*

Introduction

This office represents PLAINTIFF, Amoura Burton (hereinafter “PLAINTIFF”) in connection with PLAINTIFF’s claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of any one or more of the following entities and individual managing agents of said entities: Trove Recommerce, Inc.; Trove, Inc.; Trove Inc.; and/or Trove Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

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

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

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section

2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

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

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

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

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

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

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and

EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code § 558.1

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

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

General Information

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

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of studio associate and/or a similar title(s) and/or position(s) from in or around 2020 through on or around December 9, 2022. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Brisbane, California location(s). PLAINTIFF regularly

¹ See <https://trove.com/>. Last visited on August 22, 2023.

worked at least five (5) to eleven (11) hours per day, at least four (4) to five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were also compensated with non-discretionary bonuses/incentive pay (e.g., non-discretionary productivity bonuses) and/or other non-discretionary compensation.

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

Labor Code Violations

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

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

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

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

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

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

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

DEFENDANTS’ failure to keep “accurate and complete” payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.²

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

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

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

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

Personnel Records

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

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

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

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a

second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

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

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

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

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

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

to take her meal period late (i.e. after the fifth hour of work) due to the need to complete assigned job duties.

Based on information and belief, DEFENDANTS performed an automatic meal period deduction of at least thirty minutes per shift for NON-EXEMPT AGGRIEVED EMPLOYEES notwithstanding that DEFENDANTS had actual and/or constructive knowledge that NON-EXEMPT AGGRIEVED EMPLOYEES were required to cut their meal periods short, take interrupted meal periods and/or work through their meal periods completely, resulting in denied meal periods and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES, among other violations of the Labor Code described herein.

Based on information and belief, DEFENDANTS did not pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES a meal period premium for each missed and/or otherwise legally noncompliant meal period, in violation of California meal period law.

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

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

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

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

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

For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours in a shift, PLAINTIFF was not provided with any version of a second meal period.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or

automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

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

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

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

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

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

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

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

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

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

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

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

to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently unable to take compliant rest periods due to their need to complete assigned job duties and/or was unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

For example, PLAINTIFF was frequently required to work through part or all of her owed rest periods each shift due to the need to complete assigned job duties.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to DEFENDANTS' premises during purportedly off-duty rest periods.

Based on information and belief, DEFENDANTS did not pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES a rest period premium for each missed and/or otherwise legally non-compliant rest period, in violation of California rest period law.

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

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

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

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

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

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

violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

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

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

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

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

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

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” See §2 of all applicable Wage

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

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

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

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

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

For example, based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment and/or safety gear, make any necessary adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to stand in line behind other employees to access DEFENDANTS' time-keeping system and/or were required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock in for the start of their shifts and/or after completing a purported meal period.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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

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

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

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

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations. For example, based on information and belief, DEFENDANTS required PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to attend work-related meetings, including but not limited to, in-person meetings, Zoom meetings and/or other work-related meetings through remote platforms, without compensating PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES at all and/or in full for time spent attending these work-related meetings, resulting in off-the-clock work and the underpayment of minimum wages and overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

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

Based on information and belief, DEFENDANTS' Kronos timekeeping software was hacked in 2021 and DEFENDANTS failed to maintain accurate records of hours worked during pay periods following the hack and/or during the hack and instead paid NON-EXEMPT AGGRIEVED EMPLOYEES based on scheduled hours worked rather than actual hours worked and/or otherwise failed to pay for all hours worked due to a failure to maintain accurate records of the total hours worked, leading to unpaid minimum and overtime wages.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES the applicable minimum wage for the county and/or city within which the NON-EXEMPT AGGRIEVED EMPLOYEE worked in California.

Moreover, based on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift premium wages when they worked split shifts during the relevant period.

For example, based on information and belief, at times, DEFENDANTS required PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES to work two separate shifts in the same day. Based on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES split shift compensation whenever PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' work schedules were interrupted by non-paid non-working periods established by DEFENDANTS, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday..."). *See, also*, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment).

DEFENDANTS also failed to separately itemize these split shift premium wages on PLAINTIFF's and/or other NON-EXEMPT AGGRIEVED EMPLOYEES' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. *See*, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF and/or other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing

various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

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

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

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

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

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

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

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

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

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

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

Based on information and belief, DEFENDANTS calculated the owed overtime rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s) based on the minimum wage established for the cities and/or counties within which NON-EXEMPT AGGRIEVED EMPLOYEES worked, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES who worked in cities and/or counties in California with minimum wage rates above the California minimum wage rate.

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

For example, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES earned non-discretionary bonuses/incentive pay (e.g., non-discretionary productivity bonuses) and/or other non-discretionary compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil

penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁶

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

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

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

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

Violation of California Labor Code §§ 245-248.5: Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. Cal. Lab. Code. section 226(a).

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

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section (a)(2).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

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

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

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based

on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9). For example, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that do not provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and one-half, the wage statements either fail to provide an accurate overtime rate of pay that incorporates all non-discretionary remuneration and/or the wage statements provide at least two (2) separate overtime rate categories with each/all providing corresponding rates that are either the same as the base and/or list a rate that is half the base rate of pay and/or otherwise fail to list the accurate overtime rate of pay, further requiring NON-EXEMPT AGGRIEVED EMPLOYEES to perform extensive calculations to determine what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). As such, DEFENDANTS do not list an accurate overtime rate anywhere on wage statements issued to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, Labor Code section 226(a)(9).

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

For example, DEFENDANTS' wage statements issued to PLAINTIFF identify the following entity as the legal name of PLAINTIFF's employer: "Trove Inc.". However, based on information and belief, an entity by the name Trove Inc. does not exist on the California Secretary of State website and/or is a fictitious business name. As such, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that fail to list the correct name and/or address of the legal entity that is the employer, in violation of Labor Code section 226(a)(8).

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

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

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

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

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

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

Reporting Time Pay Violations:

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

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

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

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’

failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Violation of California Day of Rest Law

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

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

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

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

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

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

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

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

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there

were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

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

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

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

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

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

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

Failure to Pay Vested Vacation/Paid Time Off:

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy

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

respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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

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

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

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based in information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’

lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

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

Violation of Labor Code Section 208:

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

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

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

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

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

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

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

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

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

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses, including but not limited to, uniforms/work clothing/work shoes/boots/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal cell phones/mobile devices, internet and/or data usage for work-related purposes, including but not limited to, to receive and respond to work-related messages and/or phone calls.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive and respond to work-related calls and/or messages from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks and/or were otherwise required to use their personal cell phones / mobile devices for work but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses. For example, PLAINTIFF was required to download and use numerous work-related applications on PLAINTIFF’s personal cell phone / mobile device without receiving any and/or full reimbursement from DEFENDANTS for the increased data plan charges and/or other business expenses PLAINTIFF incurred in connection therewith.

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

For example, based on information and belief, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to purchase hand tools and/or equipment required to perform their assigned job duties, without receiving any and/or full reimbursement from DEFENDANTS for the business expenses NON-EXEMPT AGGRIEVED EMPLOYEES incurred in connection therewith. For example, PLAINTIFF was required to purchase hand tools and/or equipment required to perform their assigned job duties, such as, but not limited to, pencils, pens, pins, a mouse, and/or a keyboard but was not provided with any and/or full reimbursement for the business expenses PLAINTIFF incurred in connection therewith.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal

vehicles, including mileage, wear and tear and/or cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

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

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

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

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

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

The California Labor Code places certain procedural and substantive limit on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except

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

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

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

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

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

Based on information and belief, DEFENDANTS also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to DEFENDANTS to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, DEFENDANTS knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to unlawful

criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

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

Unlawful Inquires into Criminal History

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

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

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

Unlawful PAGA Waiver

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

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

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

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

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

Conclusion

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

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

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

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

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

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

Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

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

Kiara Bramasco, Esq.
CROSNER LEGAL, PC



Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

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

Tue, Aug 22, 2023 at 4:29 PM

8/22/2023

LWDA Case No. LWDA-CM-977016-23
Law Firm : Crosner Legal, PC
Plaintiff Name : Amoura Burton
Employer: Trove Recommerce, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT 3