

D.LAW, INC.

Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
David Arakelyan (SBN 337076)
d.arakelyan@d.law
Norayr Zakaryan (SBN 356913)
n.zakaryan@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff MOSES SILVA

[Additional counsel on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

HERNAN NOTARIO CAZARIN, and
MOSES SILVA, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

U.C.I. CONSTRUCTION, INC., a
California corporation; COREY DELTA
CONSTRUCTORS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-24-101433

Judge: Hon. Thomas S. Clark

Department: 17

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; Memorandum of Points and
Authorities; Declaration of Scott Lidman;
Declaration of Paul K. Haines; Declaration of
Michael Sutherland; Declaration of Moses
Silva; Declaration of Hernan Notario Cazarin;
and [Proposed] Order]*

Date: July 29, 2025

Time: 8:30 a.m.

Dept.: 17

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Tiara Gose-Hardy (SBN 323823)
tgose@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

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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 persons
15 employed by Defendants in California and classified as non-exempt, hourly employees who
16 worked for Defendants during the Class Period from September 11, 2019 through October 25,
17 2024. I do not believe that I have any conflicts of interest with the Class or with the Class
18 Representatives. I am not related to the Class Representatives. I have not previously represented
19 Defendants in any matter. I respectfully submit that I, and D.Law, Inc. are well suited to act as
20 Class Counsel in this action, and we have and will continue to vigorously represent the interests
21 of the Class Members.

22 **PROCEDURAL HISTORY**

23 9. On September 11, 2023, Plaintiff Silva filed a Class Action Complaint in Contra Costa
24 County Superior Court (Case No. C23-02276) alleging causes of action against Defendants for (1)
25 Failure to Provide Meal Periods Under Labor Code §§ 204, 223, 226.7, 512, and 1198; (2) Failure
26 to Provide Rest Periods Under Labor Code §§ 204, 223, 226.7, and 1198; (3) Failure to Pay
27 Hourly Wages and Overtime Under Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and
28 1198; (4) Failure to Provide Accurate Written Wage Statements Under Labor Code §§ 226(a); (5)

1 Failure to Timely Pay All Final Wages under Labor Code §§ 201, 202, and 203; (6) Failure to
2 Indemnify Under Labor Code § 2802; (7) Unfair Competition In Violation of Business &
3 Professions Code § 17200 *et seq.* On September 11, 2023, pursuant to Labor Code § 2699.3(a),
4 Plaintiff Silva gave timely notice to the LWDA and Defendants that Plaintiff intended to proceed
5 with a representative action under PAGA (LWDA Case No. LWDA-CM-980790-23). The PAGA
6 notice is attached hereto as **Exhibit 2**. On November 17, 2023, Plaintiff Silva filed his First
7 Amended Complaint, which added claims for penalties under PAGA, Labor Code §2698.

8 10. On April 25, 2024, Plaintiff Cazarin filed a Class and Representative Action Complaint
9 in Kern County Superior Court (Case No. BCV-24-101433) against Defendants alleging the
10 following wage and hour violations: (1) Failure to Pay Overtime Wages; (2) Failure to Pay
11 Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)
12 Failure to Reimburse Necessary Business Expenses; (6) Failure to Provide Accurate Wage
13 Statements; (7) Failure to Pay Wages Upon Termination; and (8) Unfair Competition. On July 1,
14 2024, Plaintiff Cazarin filed a First Amended Complaint adding a ninth cause of action for civil
15 penalties under the PAGA.

16 11. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Silva and Plaintiff Cazarin
17 gave timely written notice to Defendant and the LWDA by sending their PAGA Notices on
18 September 11, 2023 and April 25, 2024, respectively.

19 12. On October 22, 2024, Plaintiffs filed the Operative Second Amended Complaint in the
20 Action which added Plaintiff Silva and his pending claims (“Operative Complaint” or the
21 “Action”).

22 13. In light of the filing of the Operative Second Amended Complaint in the Action
23 including Plaintiff Silva and his claims, Plaintiff Silva will file a request for dismissal of his
24 action in Contra Costa County Superior Court.

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

28 **INVESTIGATION AND DISCOVERY**

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

8 16. Defendants, for their part, vigorously contested liability, the amount of claimed
9 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
10 documents and other gathered data, Class Counsel believed that this case was appropriate for
11 resolution via mediation. Given the high level of risk present for both sides, the Parties elected to
12 mediate Plaintiffs' claims and explore the possibility of settlement.

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

22 18. On June 10, 2024, the Parties mediated this case with Mediator Michael Dickstein, a
23 respected and highly experienced mediator in wage and hour class actions. During mediation,
24 Plaintiffs' and Defendants' counsel discussed all aspects of the case, including the risks of
25 litigation and the risks to all Parties of proceeding with a motion for class certification, as well as
26 the law relating to unpaid wages, meal periods, rest period, wage statements, and final pay. The
27 Parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement.

28 19. From Class Counsel's review of the strengths and weaknesses of the case and the risks

1 and delays posed by further litigation, Class Counsel believes that the Settlement is fair and
2 reasonable. Further, and based on the settlement negotiations, which were extensive and
3 conducted in good faith and at arm's length between attorneys with substantial experience
4 litigating class actions and wage and hour cases, the Settlement Agreement was the product of a
5 non-collusive settlement process in which the Parties were forced to make significant
6 compromises in the interest of reaching a full and complete settlement of the lawsuit.

7 **SUMMARY OF SETTLEMENT**

8 20. Defendants have agreed to pay Nine Hundred and Sixteen Thousand Dollars and Zero
9 Cents (\$916,000.00) ("Gross Settlement Amount") on a non-reversionary basis and to separately
10 pay all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.
11 (Exh. 1, ¶¶ 1.23, 3.1, pp. 2, 9.)

12 21. The Settlement Agreement defines the "Class" or "Class Members" as all persons
13 employed by Defendants in California and classified as non-exempt, hourly employees who
14 worked for Defendants during the Class Period from September 11, 2019 through October 25,
15 2024. (Exh. 1, ¶¶ 1.5, 1.13, pp. 3, 4.) The Settlement Agreement also defines "Aggrieved
16 Employee" as all individuals who were or have been employed by Defendants in California as
17 non-exempt, hourly employees at any time during the PAGA Period, which is the period from
18 September 11, 2022 through October 25, 2024. (Exh. 1, ¶¶ 1.4, 1.33, pp. 3, 6.)

19 22. The "Net Settlement Amount" shall be the Gross Settlement Amount, less the
20 following payments in the amounts approved by the Court: PAGA Penalties payment, Class
21 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
22 Expenses Payment, and the Administration Costs Payment. The remainder is to be paid to
23 Participating Class Members as Individual Class Payments. (Exh. 1, ¶ 1.29, p. 6.) These amounts
24 are detailed as follows:

25 • Class Counsel Fees Payment of not more than one-third (1/3) of the Gross
26 Settlement Amount, which is currently estimated to be \$305,333.33, for attorneys' fees, and a
27 Class Counsel Litigation Expenses Payment of not more than \$25,000.000 for litigation costs;
28 (Exh. 1, ¶ 3.2.2, p. 10.);

1 • Class Representative Service Payments of not more than \$7,500.00 to each
2 Plaintiff, totaling \$15,000.00, for their service as the Class Representatives in addition to any
3 Individual Class Payment and any Individual PAGA Payment that each Class Representative is
4 entitled to receive; (Exh. 1, ¶ 3.2.1, p. 9.);

5 • Administration Costs Payment of up to \$14,000.00 to the Settlement Administrator
6 for settlement administration costs; (Exh. 1, ¶ 3.2.3, p. 10.);

7 • PAGA Penalties in the amount of \$60,000.00 for civil penalties under PAGA, with
8 75% (\$45,000.00) paid to the LWDA (“LWDA PAGA Payment”) and 25% (\$15,000.00) paid to
9 Aggrieved Employees based on the number of pay periods each Aggrieved Employee worked
10 during the PAGA Period (“Individual PAGA Payments”); (Exh. 1, ¶ 3.2.5, p. 11.)

11 23. The Individual Class Payment is each Class Member’s share of the Net Settlement
12 Amount and will be calculated by (a) dividing the Net Settlement Amount by the total number of
13 Workweeks worked by all Participating Class Members during the Class Period, and (b) by
14 multiplying the result by each individual Class Member’s workweeks. (Exh. 1, ¶ 3.2.4, p. 11.)
15 Additionally, the Parties agreed that the Individual Settlement Payment shall be allocated as
16 follows: 25% allocated to the settlement of wage claims (“Wage Portion”) subject to applicable
17 tax withholdings; and 75% allocated to the settlement of claims for interest and penalties. (Exh. 1,
18 ¶ 3.2.4.1, p. 11.)

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

23 25. Class Members shall each receive a “Class Notice” via regular First-Class U.S. Mail,
24 using the most current, known mailing addresses identified in the Class List. (Exh. 1, ¶ 7.4.2, p.
25 17-18.) Before mailing, the Settlement Administrator will perform a search based on the National
26 Change of Address Database for information to update and correct for any known or identifiable
27 address changes. (*Id.*) Any Class Notice returned by the USPS as undelivered, the Administrator
28 shall re-mail the Class Notice using any forwarding address provided by the USPS. (Exh. 1, ¶

1 7.4.3, p. 18.) If the USPS does not provide a forwarding address, the Administrator shall conduct
2 a Class Member Address Search, and re-mail the Class Notice to the most current address
3 obtained. (*Id.*)

4 26. Class Members shall have forty-five (45) days after the Administrator mails the Class
5 Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed)
6 to dispute the information provided in their Class Notices of Class Action Settlement and they
7 must timely produce evidence to support the information is inaccurate. (Exh. 1, ¶¶ 7.4.4, 7.6, pp.
8 18-19.) In the absence of any contrary documentation, the Administrator is entitled to presume
9 that the Workweeks contained in the Class Notice are correct so long as they are consistent with
10 the Class Data. (Exh. 1, ¶ 7.6, p. 20.)

11 27. Class Members wishing to opt-out from the Settlement Agreement must sign and
12 postmark a written Request for Exclusion to the Settlement Administrator within the Response
13 Deadline (Exh. 1, ¶ 7.5.1, p. 18-19.) The Exclusion Deadline will be forty-five (45) days after the
14 date the Class Notice was mailed (plus an additional fourteen (14) days for Class Members whose
15 Class Notice is remailed). (*Id.*)

16 28. Class Members will also have the opportunity to object to the Settlement and/or this
17 Agreement, by serving a copy of the objection to the Settlement Administrator at Apex Class
18 Action LLC (“Apex”). (Exh. 1, ¶ 7.7, pp. 20.) All objections must be served within forty-five (45)
19 days of Settlement Administrator’s mailing of the Class Notice (plus an additional fourteen (14)
20 days for Class Members whose Class Notice was re-mailed). (Exh. 1, ¶ 7.7.2, p. 20.)

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

22 **IN LIGHT OF THE SETTLEMENT AMOUNT**

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

28 30. The strength of the Plaintiffs’ case in light of the settlement amount is deemed by

1 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
2 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiffs allege that Defendants failed to pay
3 minimum wages and overtime, failed to provide meal and rest breaks, failed to provide
4 reimbursement of business expenses, failed to provide accurate wage statements, and failed to pay
5 all wages upon termination, all in violation of California law. Plaintiffs seek related violations of
6 California’s Business & Professions Code and penalties pursuant to Labor Code § 2698 *et seq.*
7 The merits of each of these claims will be addressed separately below.

8 31. Based on the data provided, Class Counsel estimated the potential realistic exposure for
9 the main claims as follows: unpaid wage claim at **\$129,696.80** for minimum wages and overtime,
10 meal period claim at **\$808,131.80**, rest period claim at **\$511,816.31**, wage statement claim at
11 **\$187,570.00**, waiting time penalties at **\$24,840.00**, unreimbursed business expenses claim at
12 **\$34,650.00**, and on PAGA at **\$95,390.00**, for a total realistic maximum exposure of
13 **\$1,792,094.91**.

14 32. Taking into account the difficulties of proof, Defendants’ defenses, and other attendant
15 risks, Plaintiffs estimate that the total amount of damages, monetary penalties, or other relief that
16 the class could reasonably and realistically expect to be awarded at trial is significantly less than
17 the maximum exposure estimated for the claims in this case.

18 **Minimum Wages and Overtime**

19 33. Plaintiffs alleged that Defendants failed to pay Plaintiffs and other Class Members
20 minimum wages and overtime for all hours worked. Specifically, Plaintiffs contended that they
21 and other Class Members had to perform work off-the-clock prior to the start of their shifts,
22 including being required to arrive to work early, and wait to be granted access onto Defendants’
23 premises, donning their work clothes and boots, undergo mandatory security checks to gain
24 access to the building, and spending time locating their respective supervisors in order to clock
25 into work. Plaintiffs further contended that the entire process was repeated after the completion of
26 their scheduled shifts and clocking out for the day, including having to doff their work clothes
27 and boots. Furthermore, Plaintiffs alleged that Defendants maintained a uniform policy or
28 practice of recording the scheduled hours of Class Members and not the actual time Class

1 Members began working and/or stopped working.

2 34. Defendants denied all allegations and contended that they paid for all reported hours
3 worked, and that they paid proper minimum and overtime wages. Defendants further argued that
4 given their written policies and practices, any unrecorded hours were likely subject to
5 individualized inquiry and unlikely to be certified. Moreover, Defendants disputed claims that
6 Class Members were required to perform work pre-shift before clocking in or post-shift after
7 clocking out. Defendants also argued that they did not engage in rounding of time entries. Based
8 on the above detailed facts, Class Counsel estimated Defendants' exposure on unpaid wages
9 claims to be approximately \$648,484.00 (assuming 5 minutes of off the clock work per shift and
10 95% attributable to overtime). However, given Defendant's defenses and the potential hurdles
11 facing certification of this claim, Class Counsel applied an 80% discount making for an adjusted
12 realistic exposure of \$129,696.80 for Defendants.

13 **Meal Periods and Rest Breaks**

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

19 36. Plaintiffs argued that Defendants had a common practice and policy of denying
20 compliant meal periods. Plaintiffs contended that Class Members were regularly interrupted
21 during their meal periods and therefore were not provided with an off-duty thirty (30) minute
22 meal period in accordance with California law. Specifically, due to the work demands imposed by
23 Defendants and the nature of the work, the meal periods were untimely, short, interrupted.
24 Moreover, Plaintiffs contended that Class Members were not required to clock in and out for their
25 meal periods, and to the extent a supervisor purported to record a meal period, the recorded meal
26 period did not accurately reflect the length of the meal period, the time of the meal period nor
27 whether a meal period was in fact not taken. Additionally, Defendants' meal period policies and
28 practices failed to provide Plaintiffs and Class Members a second meal period for shifts over 10

1 hours.

2 37. Defendants disagreed with Class Counsel's interpretation of the law and facts.
3 Defendants argued that in practice all employees were authorized, encouraged, and did in fact
4 take timely uninterrupted meal breaks. Defendants also argued that their written policies were
5 valid and disseminated to all Class Members. Defendants contended that Class Members were
6 given a reasonable opportunity to take their meal periods, and in fact received their meal periods
7 most of the time. Defendants also contended that they did not instruct Class Members to record
8 30-minute meal periods if they did not in fact take a 30-minute meal period. Rather, Defendants
9 contended that meal periods were scheduled, and employees took their meal periods at their
10 scheduled times, which resulted in meal periods being recorded at the same time each day for that
11 scheduled 30-minute period. Defendants also contended that on the occasions when compliant
12 meal periods were not provided, Class Members were paid premium pay in accordance with the
13 law.

14 38. Class Counsel estimated Defendants' maximum total exposure on the meal break claim
15 at approximately \$4,040,659 (109,148 meal break violations assuming a 75% violation rate x
16 \$37.02 average rate of pay). However, Class Counsel believes this estimate is high given
17 Defendants' defenses and potential hurdles facing certification of this claim and thus provided a
18 80% discount making Defendants' adjusted realistic exposure \$808,131.80.

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

24 40. Defendants maintained that they did provide a reasonable opportunity for Class
25 Members to take duty-free rest breaks. Defendants also pointed out that, unlike meal periods, rest
26 breaks need not be recorded. As these considerations would likely depress the damages *vel non*
27 ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break
28 claim. Class Counsel estimated Defendants' maximum total exposure on the rest break claim at

1 approximately \$2,559,081.54 (69,127 rest break violations (assuming a 50% rest break violation
2 rate for all Class Member shifts) x \$37.07 average rate of pay). However, Class Counsel believes
3 this estimate is high given the difficulty of proving rest break violations at trial and the potential
4 hurdles facing certification of this claim, and thus applied an 80% discount making Defendant's
5 exposure more likely to be \$511,816.31.

6 **Paystub Violations**

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

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

1 § 340.

2 43. Plaintiff's expert estimated Defendants' maximum total exposure on the section 226
3 claim at approximately \$937,850.00 (\$50/\$100 per pay period x 9,539 pay periods during the
4 relevant period). The Parties discussed these issues, and in light of these and other considerations
5 Class Counsel factored in a reduction of liability and damages for this cause of action. Class
6 Counsel believes it may be difficult to prevail on this claim because Class Members would need
7 to show that they suffered an injury and that Defendants' noncompliance was knowing and
8 intentional (on top of the challenges described above with the underlying wage and break claims)
9 which are both subject to individualized issues making certification of this claim difficult to
10 achieve. Thus, Class Counsel provided an 80% discount making Defendant's adjusted exposure
11 \$187,570.00.

12 **Failure to Pay Final Wages**

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

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

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

27 A willful failure to pay wages within the meaning of Labor Code Section 203
28 occurs when an employer intentionally fails to pay wages to an employee when

1 those wages are due. However, a good faith dispute that any wages are due will
2 preclude imposition of waiting time penalties under Section 203.

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

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

16 47. Plaintiffs’ expert estimated Defendants’ maximum total exposure on the section 203
17 claim at approximately \$124,200.00 (460 terminated employees x 30 days x 9 hours per shift x
18 \$37.02 average rate of pay). Class Counsel estimates it would be difficult to recover waiting time
19 penalties given that Plaintiffs would need to show willfulness on top of proving the underlying
20 wage and break claims which are also potentially subject to individualized issues making
21 certification of this claim difficult to achieve. Thus, Class Counsel provided an 80% discount
22 making Defendants’ adjusted exposure \$24,840.00.

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

24 48. Labor Code § 2802 provides that an employer must reimburse employees for all
25 necessary expenditures incurred in the performance of their job duties. Plaintiffs worked for
26 Defendants and in the course of performing their job duties, incurred necessary business-related
27 expenses, including, but not limited to the cost of personal cell phone usage, and purchasing
28 materials such as tubes and bags as well as work tools. Defendants contended that Plaintiffs and
Class Members were not required to use their personal cell phones or otherwise incur
reimbursable expenses under the law. Plaintiffs’ counsel estimate that Defendants’ maximum
total exposure for failing to reimburse business expenses is approximately \$173,250.00 (\$5 per

1 pay period (per Plaintiffs' estimated costs) x 34,650 pay periods). Owing to the arguments above
2 and the fact that this claim was not a major driver of exposure in this case, Class Counsel
3 accordingly applied an 80% discount, resulting in \$34,650.00 in maximum realistic liability
4 exposure for Defendants.

5 **PAGA Penalties**

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

17 50. Plaintiffs contend that the provisions of the Labor Code potentially triggering PAGA
18 penalties in this case include but are not limited to Labor Code §§ 201, 202, 203, 204, 210, 226,
19 226.3, 226.7, 227.3, 245, *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,
20 1194.2, 1197, 1198, 1199, 2698, 2699 *et seq.*, and 2802 and applicable IWC Wage Orders. PAGA
21 penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may
22 award a lesser amount than the maximum civil penalty amount specified by this part if, based on
23 the facts and circumstances of the particular case, to do otherwise would result in an award that is
24 unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App.
25 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendants here
26 maintained that it had a strong argument that it would be unjust to award maximum PAGA
27 penalties.

28 51. Furthermore, PAGA penalties are also derivative of each and every other claim, and

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

28 52. Class Counsel estimated Defendants' maximum total exposure on the PAGA claim at

1 approximately \$953,900.00 (\$100 x 9,539 pay periods (no stacking)). Class Counsel then applied
2 discounts in light of the countervailing arguments with regard to the other causes of action, and
3 moreover the Court's power to award "a lesser amount than the maximum civil liability." A
4 penalty award of \$10 per pay period would make the adjusted realistic exposure \$95,390.00. The
5 Parties also considered that the purpose of PAGA is to "achieve maximum compliance with state
6 labor laws,". *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes
7 the Settlement's contemplated PAGA payment of \$60,000.00 appropriate.

8 **Unfair Business Practices**

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

13 **Summary**

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

19 55. Class Counsel had to apply appropriate discounts in light of the facts and law as
20 discussed above. Thus, this settlement, like most others, was the product of compromise. As
21 addressed above, Plaintiffs estimated that Defendants faced a total realistic exposure of
22 approximately \$1,792,094.91. The Gross Settlement Amount of \$916,000.00 represents a
23 recovery for the Class of approximately 51.11% of the total realistic exposure Plaintiffs estimated
24 that Defendants could face on the primary claims in this case. Plaintiffs and Class Counsel submit
25 that this is an excellent result in the face of uncertainty and the prospects of protracted and
26 contested litigation through class certification, summary judgment, and trial, and particularly in
27 light of all of the factors described above. Under the Settlement, each of the approximately 785
28 Class Members will receive an average of \$632.69 based on a straight average.

1 56. Defendants generally deny all claims alleged in the Action and further deny class
2 and/or representative treatment is appropriate for any purpose other than this Settlement and that
3 it complied with all applicable laws. However, after careful consideration, Defendants have
4 concluded that further litigation would be protracted and expensive and that it is desirable that the
5 Action be fully and finally settled in the manner and upon the terms and conditions herein.

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

14 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
15 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**
16 **STATUS THROUGH TRIAL**

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

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

27 60. The Parties disputed the effect of these and other issues on class certification and
28 decertification. Class Counsel maintained that there were several legal and factual questions at

1 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
2 the same policies and practices applied to all Class Members and therefore common questions
3 obtained and were likely to predominate over individual inquiries. Defendants disputed these
4 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
5 such as this one. Defendants also argued that their policies were compliant with the law, while
6 Plaintiffs disputed that the policies were lawful, and argued the lawfulness of such policies would
7 give rise to common questions amenable to certification. Thus, the Parties had set positions on the
8 propriety of certifiability and liability that did not admit of an easy resolution.

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

24 **NOTICE TO AND REACTION OF CLASS MEMBERS**
25 **TO THE PROPOSED SETTLEMENT**

26 62. It is premature to address this factor now, at the preliminary approval stage; however,
27 some observations are in order. First, the notification procedure set out in the Settlement
28 Agreement provides the greatest likelihood that each and every Class Member will receive the

1 Notice of Class Action Settlement (“Class Notice”), attached to the Settlement Agreement as
2 **Exhibit A.** Under the Settlement Agreement, the Settlement Administrator will send the Class
3 Notice to each Class Member via First Class U.S. mail. (Exh. 1, ¶ 7.4.2, pp. 17-18.) Before
4 mailing, the Settlement Administrator will perform a search based on the National Change of
5 Address Database for information to update and correct for any known or identifiable address
6 changes. (*Id.*) If a new address is obtained by way of a returned Class Notice, then the Settlement
7 Administrator will promptly forward the original Class Notice to the updated address via first-
8 class regular U.S. mail. (Exh. 1, ¶ 7.4.3, p. 18.) Thus, most, if not all, Class Members will likely
9 receive the Class Notice.

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

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

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

23 65. The foregoing discussion establishes the fairness of the class-action settlement in the
24 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
25 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
26 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
27 practices and engaged in non-collusive, arm’s-length negotiations in order to reach a settlement.
28 Defendants have agreed to pay fair value to settle Plaintiffs’ claims given the existence of legal

1 uncertainty. From Class Counsel's substantial experience with wage-and-hour class action
2 lawsuits Class Counsel believe that this case could not have settled on better terms under the
3 circumstances.

4 **REQUEST FOR ATTORNEYS' FEES**

5 66. Under the Settlement, Class Counsel will seek a Class Counsel Fees Payment of no
6 more than \$305,333.33 (up to one-third of the Gross Settlement Amount) and a reasonable Class
7 Counsel Litigation Expenses Payment not to exceed \$25,000.00, subject to approval by the Court.
8 (Exh. 1, ¶ 3.2.2, p. 10.) Defendants will not oppose Class Counsel's fees and cost request. This
9 request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work
10 they have put into this case and, moreover, the risk they assumed by taking it in the first place.
11 The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work
12 that they have already done and for all the work they will continue to do in carrying out and
13 overseeing the notification to Class Members, communicating with Class Members regarding
14 their claims, and assisting in the administration of the settlement if it is preliminarily approved.

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

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

28 ///

1 **ENHANCEMENT TO PLAINTIFFS AS THE CLASS REPRESENTATIVES**

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

9 70. The courage it took to stand up to Defendants by filing and litigating this action in this
10 way should not be underestimated. By suing Defendants, Plaintiffs increased their risk of
11 retaliation by prospective employers.

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

22 72. Plaintiffs have spent a significant amount of time with Class Counsel detailing their
23 knowledge of Defendants practices and helping Class Counsel with the prosecution of this action.
24 They have diligently, adequately, and fairly represented Class Members, and have not placed
25 their interests above any member of the putative class. The payment to Plaintiffs is intended to
26 recognize their time and effort on behalf of the Class. The amount requested is fair and
27 appropriate based on his contribution and involvement. For example, Plaintiffs instigated the
28 lawsuit by bringing these violations to the attention of Class Counsel. They spent several hours

1 answering questions and providing information to Class Counsel throughout the pendency of this
2 action. They identified witnesses, explained to Class Counsel day to day business practices of
3 Defendants with regard to work schedules, etc. The Parties are in agreement that Plaintiffs are
4 entitled to an enhancement for their time and effort in this matter. This sort of payment to a class
5 representative has been a common feature of settlements negotiated by Class Counsel and has
6 been routinely approved by trial courts.

7 73. In light of the foregoing, Class Counsel believes that the Class Representative Service
8 Payment in the amount of \$7,500.00 to each Plaintiff, totaling \$15,000.00, is fair and reasonable.
9 This amount is a far cry from the \$50,000 of enhancement awards to the two named plaintiffs
10 approved by the trial court in *Clark*. See *Clark, supra*, 175 Cal.App.4th at 807. Although Class
11 Counsel appreciate that the Court has a duty to ensure that class representatives are not
12 overcompensated at the expense of the class, modest incentive awards in employment class
13 actions, such as the one here, are necessary not only to compensate class representatives for the
14 time they spend in the case, but also, and more importantly, to encourage aggrieved employees to
15 challenge questionable employment practices notwithstanding the very real consequences they
16 may face.

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

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

26 a. Numerosity. The putative class is so numerous that joinder of all members is
27 impractical. Class Members are all persons employed by Defendants in California and classified
28 as non-exempt, hourly employees who worked for Defendants during the Class Period from

1 September 11, 2019 through October 25, 2024. Documents and information exchanged between
2 the Parties reflect a class of approximately 785 Class Members and 382 Aggrieved Employees.
3 Thus, there are a sufficient number of Class Members to warrant certifying this as a class action
4 for settlement purposes.

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

8 c. Typicality. A class representative's claims are typical when they arise from the
9 same event, practice, or course of conduct that gives rise to the claims of other putative class
10 members, and if their claims rest on the same legal theories. The class representative's claims
11 must be "typical" but not necessarily identical to the claims of other class members. It is
12 sufficient that the representative is similarly situated so that he or she will have the motive to
13 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
14 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been
15 the law in California that the class representative must have identical interests with the class
16 members."). Thus, it is not necessary that the class representative should have personally incurred
17 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
18 (2001) 91 Cal.App.4th 224, 228.

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

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

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

5 Plaintiffs have no conflicts with the class and in fact his interests are aligned with those of
6 the class. Because Plaintiffs’ claims are identical to those that would be asserted by the unnamed
7 Class Members were they before the Court, Plaintiffs have every interest in zealously
8 representing the unnamed class members. Plaintiffs have not shrunk from this responsibility.
9 Indeed, Plaintiffs have devoted a substantial amount of time and energy to litigating this action
10 and effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in
11 wage-and-hour litigation, especially class actions, and have zealously represented the interests of
12 the class in litigating this case. *See infra* ¶¶ 3-8. Accordingly, the adequacy requirement is
13 satisfied.

14 e. Commonality. Common questions of law or fact in this case predominate over
15 individual questions. This action involves, *inter alia*, a determination about Defendants’ alleged
16 failure to pay minimum wages and overtime, failure to pay all wages due to allegedly common
17 and unlawful policies, failure to provide meal and rest periods, the resulting failure to pay final
18 wages when required, the failure to provide accurate paystubs, the failure to pay employees on a
19 timely basis, the failure to reimburse necessary business expenses, and largely derivative claims
20 under the Business & Professions Code and PAGA. Plaintiffs contend these practices, including
21 the alleged failure to provide corresponding premium payments, affected class members in the
22 same way. All class members were employed during the Class Period. Therefore, the Operative
23 Complaint delineates a common course of conduct applicable to all Class Members.

24 f. Predominance. Individualized issues do not predominate over the issues of law and
25 fact that are common to the class as a whole. The principal issues of controversy are whether
26 Class Members were paid for all hours worked and provided lawful meal and rest breaks. As
27 explained, *supra*, there are common issues of law and fact given that Plaintiffs and all Class
28 Members were subjected to the same policies and pay practices during the relevant time period.

1 Plaintiffs and Class Members seek meal and rest break premiums, unpaid wages and overtime,
2 and penalties for work performed as non-exempt hourly employees for Defendants. These issues
3 are suitable for common adjudication because all Class Members were subject to the same
4 employment policies and Plaintiffs contend the practices applied uniformly to all Class Members.

5 g. Superiority. Class resolution is superior to other available methods for the fair and
6 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
7 individually control the prosecution of separate actions. Although the injury resulting from
8 Defendants' policies and practices are real and significant, the cost of individually litigating each
9 such case against Defendants would easily exceed the value of any relief that could be obtained
10 by any one Class Member individually. If Class Members are forced to litigate their claims
11 individually this would result in about 785 individual actions against Defendants. Here, the
12 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
13 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
14 dwarf a potential recovery.

15 h. Kern County is a compelling forum for this action given that Defendants own,
16 maintain offices, transact business, have agents within the County of Kern and numerous Class
17 Members work in this County.

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

21 75. On July 7, 2025, Plaintiffs submitted the Settlement Agreement and this Motion to the
22 LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as
23 **Exhibit 3.**

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

26 Executed this July 7, 2025, at Glendale, California.

27
28 _____
Enoch J. Kim

EXHIBIT 1

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)

slidman@lidmanlaw.com

Milan Moore (SBN 308095)

mmoore@lidmanlaw.com

2155 Campus Drive, Suite 150

El Segundo, California 90245

Tel: (424) 322-4772

Fax: (424) 322-4775

Attorneys for Plaintiff

HERNAN NOTARIO CAZARIN

[counsel continued on next page]

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

HERNAN NOTARIO CAZARIN and
MOSES SILVA, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

U.C.I. CONSTRUCTION, INC., a California
corporation; COREY DELTA
CONSTRUCTORS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-24-101433

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

Complaint filed: September 11, 2023

FAC Filed: November 17, 2023

Trial Date: None set

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
HERNAN NOTARIO CAZARIN

D.LAW, INC.

Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
David Arakelyan (SBN 337076)
d.arakelyan@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
450 N. Brand Blvd. Ste. 840
Glendale, CA 91203
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Attorneys for Plaintiff
MOSES SILVA

BAKER & MCKENZIE LLP

Michael E. Brewer (SBN 177912)
michael.brewer@bakermckenzie.com
Baker & McKenzie LLP
Two Embarcadero Center, 11th Floor
San Francisco, CA 94111-3802
Telephone: (415) 576 – 3000
Facsimile: (415) 576 – 3099

Attorney for Defendants U.C.I. CONSTRUCTION, INC. and COREY DELTA
CONSTRUCTORS, INC.

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Hernan Notario Cazarin and Moses Silva (collectively, “Plaintiffs”) and Defendants U.C.I. Construction, Inc., and Corey Delta Constructors, Inc. (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

1.1 “Action” means the consolidated Operative Second Amended Complaint of the civil actions initially filed and separately maintained by Plaintiffs against Defendants but since consolidated into one single class and representative action entitled *Hernan Notario Cazarin and Moses Silva v. U.C.I. Construction, Inc., et al.*, Case No. BCV-24-101433, and pending in the Superior Court of the State of California, County of Kern.

1.2 “Administrator” means Apex Class Action LLC (“Apex”), the neutral entity the Parties have agreed to appoint to administer the Settlement.

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

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

1.5 “Class” means all persons employed by Defendants in California and classified as non-exempt, hourly employees who worked for Defendants during the Class Period.

1.6 “Class Counsel” means Emil Davtyan, David Yeremian, David Keledjian, David Arakelyan, and Enoch J. Kim of D.LAW, INC., Scott M. Lidman and Milan Moore of LIDMAN LAW, APC, and Paul K. Haines of HAINES LAW GROUP, APC.

1.7 “Class Counsel Fees Payment” means the amount allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and paid from the Gross Settlement Amount.

1.8 “Class Counsel Litigation Expenses Payment” means the amount allocated to Class Counsel for reimbursement of reasonable expenses and costs incurred to prosecute the Action and paid from the Gross Settlement Amount.

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

1.10 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12 “Class Notice” means the Court approved Notice of Settlement and Hearing Date for Final Approval, to be mailed to Class Members and include a Spanish translation, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.13 “Class Period” or “Class Settlement Period” means the period from September 11, 2019 through October 25, 2024.

1.14 “Class Representatives” mean Hernan Notario Cazarin and Moses Silva, the named Plaintiffs in the Operative Second Amended Complaint in the Action seeking Court approval to serve as Class Representatives.

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

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

1.17 “Defendants” means named Defendants U.C.I. Construction, Inc. and Corey Delta Constructors, Inc.

1.18 “Defense Counsel” means Michael E. Brewer of Baker & Mackenzie, LLP.

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

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

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

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

1.23 “Gross Settlement Amount” means \$916,000.00, which is the total amount Defendants agree to pay under the Settlement, except as provided in Paragraph 9 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 Defendants in addition to the Gross Settlement Amount.

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

1.25 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

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

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

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

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

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

1.31 “Operative Complaint” means the operative Second Amended Class and Representative Action Complaint filed in the Action on October 22, 2024.

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

1.33 “PAGA Period” means the period from September 11, 2022 through October 25, 2024.

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

1.35 “PAGA Notices” means Plaintiff Silva’s September 11, 2023 letter and Plaintiff Cazarin’s April 25, 2024 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.36 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$60,000.00), allocated 25% to the Aggrieved Employees (\$15,000.00) and 75% to LWDA (\$45,000.00) in settlement of PAGA claims.

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

1.38 “Plaintiffs” mean Moses Silva and Hernan Notario Cazarin, the named Plaintiffs in the Action.

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

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

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

1.42 “Released Parties” means: Defendants U.C.I. Construction, Inc. and Corey Delta Constructors, Inc. and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

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

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

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

2. **RECITALS.**

2.1 On September 11, 2023, Plaintiff Silva filed a Class Action Complaint in Contra Costa County Superior Court (Case No. C23-02276) alleging causes of action against Defendant for (1) Failure to Provide Meal Periods Under Labor Code §§ 204, 223, 226.7, 512, and 1198 ; (2) Failure to Provide Rest Periods Under Labor Code §§ 204, 223, 226.7, and 1198; (3) Failure to Pay Hourly Wages and Overtime Under Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198; (4) Failure to Provide Accurate Written Wage Statements Under Labor Code §§ 226(a); (5)

1 Failure to Timely Pay All Final Wages under Labor Code §§ 201, 202, and 203; (6) Failure to
2 Indemnify Under Labor Code § 2802; (7) Unfair Competition In Violation of Business &
3 Professions Code § 17200 *et seq.* On November 17, 2023, Plaintiff Silva filed his First Amended
4 Complaint, which added claims for penalties under PAGA, Labor Code §2698.

5 2.2 On April 25, 2024, Plaintiff Cazarin filed a Class and Representative Action Complaint
6 in Kern County Superior Court (Case No. BCV-24-101433) against Defendants alleging the
7 following wage and hour violations: (1) Failure to Pay Overtime Wages; (2) Failure to Pay
8 Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5)
9 Failure to Reimburse Necessary Business Expenses; (6) Failure to Provide Accurate Wage
10 Statements; (7) Failure to Pay Wages Upon Termination; and (8) Unfair Competition. On July 1,
11 2024, Plaintiff Cazarin filed a First Amended Complaint adding a ninth cause of action for civil
12 penalties under the PAGA.

13 2.3 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Silva and Plaintiff Cazarin
14 gave timely written notice to Defendant and the LWDA by sending their PAGA Notices on
15 September 11, 2023 and April 25, 2024, respectively.

16 2.4 Defendants deny the allegations in the Operative Complaint, deny any failure to comply
17 with the laws identified in the Operative Complaint, and deny any and all liability for the causes
18 of action alleged.

19 2.5 On June 10, 2024, the Parties participated in an all-day mediation presided over by
20 Mediator Michael Dickstein and were able to reach an agreement on general settlement terms.
21 The Parties memorialized their agreement in a Memorandum of Understanding on July 20, 2024.

22 2.6 In advance of mediation, Class Counsel conducted a thorough investigation into the facts
23 of, and applicable law to, the Action, including speaking to current and former employees of
24 Defendants regarding Defendants' employment policies and practices. Prior to mediation,
25 Plaintiffs also obtained and analyzed a representative sampling of time and payroll data for Class
26 Members and the necessary policy documents through informal discovery to properly evaluate
27 the strengths and weakness of the claims and engage in meaningful settlement discussions.
28 Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk*

v. Foot Locker Retail, Inc., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130 (2008) (“*Dunk/Kullar*”).

2.7 On October 22, 2024, Plaintiffs filed the Operative Second Amended Complaint in the Action which added Plaintiff Silva and his pending claims.

2.8 After this Agreement has been fully executed, and in light of the filing of the Operative Second Amended Complaint in the Action including Plaintiff Silva and his claims, Plaintiff Silva will dismiss his action which was filed in Contra Costa County Superior Court.

2.9 The Court has not granted class certification because the Parties engaged in mediation prior to any class certification briefing.

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

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants will pay Nine Hundred and Sixteen Thousand Dollars (\$916,000.00) 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. Defendants have 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 Defendants.

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 \$7,500.00 each, totaling \$15,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiffs’ request for Class

1 Representative Service Payments that do not exceed this amount. As part of the motion for the
2 Class Counsel Fees and Litigation Expenses Payments, Plaintiffs will seek Court approval for any
3 Class Representative Service Payments no later than 16 (sixteen) court days prior to the Final
4 Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class
5 Representative Service Payment less than the amount requested, the Administrator will retain the
6 remainder in the Net Settlement Amount to be distributed to Participating Class Members. The
7 Administrator will pay the Class Representative Service Payments using IRS Form 1099.
8 Plaintiffs assume full responsibility and liability for employee taxes owed on the Class
9 Representative Service Payments.

10 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the
11 Gross Settlement Amount, which is currently estimated to be \$305,333.33 and a Class Counsel
12 Litigation Expenses Payment of not more than \$25,000.00. Defendants will not oppose requests
13 for these payments. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees and
14 Litigation Expenses Payment no later than 16 (sixteen) court days prior to the Final Approval
15 Hearing, or as otherwise ordered by the Court. If the Court approves a Class Counsel Fees
16 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested,
17 the Administrator will allocate the remainder to the Net Settlement Amount for distribution to
18 Participating Class Members. Released Parties shall have no liability to Class Counsel or any
19 other Plaintiffs' counsel arising from any claim to any portion of Class Counsel Fee Payment
20 and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel
21 Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
22 Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees
23 Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless,
24 and indemnifies Defendants, from any dispute or controversy regarding any division or sharing
25 of any of these Payments.

26 3.2.3 To the Administrator: An Administrator Costs Payment not to exceed \$14,000.00
27 except for a showing of good cause and as approved by the Court. To the extent the
28

Administration Costs are less or the Court approves payment of less than \$14,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment is 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 individual 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 the Settlement of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. Seventy-five percent 75% of each Participating Class Member's Individual Class Payment will be allocated to the 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 \$60,000.00 to be paid from the Gross Settlement Amount, with 75% (\$45,000.00) allocated to the LWDA PAGA Payment and 25% (\$15,000.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$15,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants represent there are approximately **785** Class Members who collectively worked a total of approximately **34,650** Workweeks from September 11, 2019 through October 25, 2024, and approximately **382** Aggrieved Employees who worked a total of approximately **13,000** PAGA Pay Periods from September 11, 2022 through the earlier of October 25, 2024 or the date of preliminary approval.

4.2 Class Data. Not later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendants 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. Defendants have a continuing duty to immediately notify Class Counsel if they discover 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 Defendants 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. Defendants shall fully fund the Gross Settlement Amount and the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the

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

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided ("Void Date"). 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 the 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 canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the

name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants 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 Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Aggrieved Employees will release claims against all Released Parties as follows:

5.1 **Plaintiffs’ Release.** Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, releases and discharges Released Parties from all claims, transactions, or occurrences, that occurred during the Class Period, including all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint (“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 outside 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, 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,

1 and that if known by him or her would have materially affected his or her settlement
2 with the debtor or Released Party.

3 5.2 Release by Participating Class Members: All Participating Class Members, on behalf of
4 themselves and their respective former and present representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns, release the Released Parties from all claims, rights,
6 demands, liabilities, and causes of action alleged or which could have reasonably been alleged
7 based on the facts alleged in the Operative Complaint that accrued during the Class Period
8 (collectively "Released Class Claims"). Except as set forth in Paragraph 5.3 of this Agreement,
9 Participating Class Members do not release any other claims, including claims for vested benefits,
10 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
11 insurance, disability, social security, workers' compensation, or claims based on facts occurring
12 outside the Class Period.

13 5.3 Release by Aggrieved Employees: All Aggrieved Employees, including Non-
14 Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of
15 themselves and their respective former and present representatives, agents, attorneys, heirs,
16 administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties
17 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
18 Complaint and the PAGA Notices to the LWDA that accrued during the PAGA period ("Released
19 PAGA Claims").

20 The Settlement shall release and bar all Released PAGA Claims by or on behalf of
21 Plaintiffs and all Aggrieved Employee during the PAGA Period, regardless of whether Plaintiffs
22 and/or an Aggrieved Employee negotiates (cashes) their/his/her settlement checks sent pursuant
23 to this Settlement. The Parties agree that there is no statutory right for any Aggrieved Employee
24 to opt out or otherwise exclude himself or herself from the PAGA settlement and the associated
25 release of claims and rights under PAGA. The Parties also agree that Aggrieved Employees do
26 not have a right to intervene in or object to the Settlement, or to require a court to receive and
27 consider objections to the Settlement, and that Aggrieved Employees do not have a right to move
28 to vacate a judgement entered in the Action. As such, an individual Aggrieved Employee opting

1 out of the Class has no impact as to his/her standing and/or inclusion in the PAGA settlement
2 assuming they/he/she qualifies as an Aggrieved Employee. Class Counsel agrees to provide
3 timely notice of the Settlement to the LWDA as required under PAGA. Any Aggrieved
4 Employees who submit a valid and timely Request for Exclusion are still entitled to their
5 Individual PAGA Payment and have no right or ability to opt out of the portion of this Settlement
6 releasing the Released PAGA Claims.

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

9 6.1 **Plaintiffs’ Responsibilities**. Plaintiffs will prepare all documents necessary for obtaining
10 Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the
11 Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*
12 and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2));
13 (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement;
14 (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiffs confirming willingness
15 and competency to serve and disclosing all facts relevant to any actual or potential conflicts of
16 interest with Class Members, and/or the Administrator; (v) a signed declaration from Class
17 Counsel firm attesting to its competency to represent the Class Members; its timely transmission
18 to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section
19 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement
20 (Labor Code section 2699, subd. (l)(2)).

21 6.2 **Responsibilities of Counsel**. Class Counsel and Defense Counsel are jointly responsible
22 for expeditiously finalizing the Motion for Preliminary Approval. Class Counsel will obtain a
23 prompt hearing date for the Motion for Preliminary Approval, file the Motion for Preliminary
24 Approval no later than 16 (sixteen) court days before the hearing, unless otherwise ordered by the
25 Court, and deliver the Court’s Preliminary Approval Order to the Administrator.

26 6.3 **Duty to Cooperate**. If the Parties disagree on any aspect of the proposed Motion for
27 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
28 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 Apex to serve as the Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

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, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 (fourteen) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks

1 and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the
2 Administrator shall update Class Member addresses using the National Change of Address
3 database.

4 7.4.3 Not later than three (3) business days after the Administrator's receipt of any Class
5 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
6 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
7 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
8 Notice to the most current address obtained. The Administrator has no obligation to make further
9 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
10 USPS a second time.

11 7.4.4 The deadlines for Class Members' written objections, challenges to Workweeks
12 and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days
13 days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members
14 whose notice is re-mailed. The Administrator will inform the Class Member of the extended
15 deadline with the re-mailed Class Notice.

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

24 7.5 Requests for Exclusion (Opt-Outs).

25 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement
26 must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not
27 later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional
28 fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion

1 is a letter from a Class Member or his/her representative that reasonably communicates the Class
2 Member's election to be excluded from the Settlement and includes the Class Member's name,
3 address and email address or telephone number. To be valid, a Request for Exclusion must be
4 timely faxed, emailed, or postmarked by the Response Deadline.

5 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails
6 to contain all the information specified in the Class Notice. The Administrator shall accept any
7 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
8 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
9 determination shall be final and not appealable or otherwise susceptible to challenge. If the
10 Administrator has reason to question the authenticity of a Request for Exclusion, the
11 Administrator may demand additional proof of the Class Member's identity. The Administrator's
12 determination of authenticity shall be final and not appealable or otherwise susceptible to
13 challenge.

14 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion
15 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
16 bound by all terms and conditions of the Settlement, including the Participating Class Members'
17 Releases under paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating
18 Class Member actually receives the Class Notice or objects to the Settlement.

19 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a
20 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
21 right to object to the class action components of the Settlement. Because future PAGA claims are
22 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
23 are Aggrieved Employees are deemed to release the Released PAGA Claims identified in
24 Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

25 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
26 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose
27 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
28 allocated to the Class Member in the Class Notice. The Class Member may challenge the

1 allocation by communicating with the Administrator via fax, email or mail. The Administrator
2 must encourage the challenging Class Member to submit supporting documentation. In the
3 absence of any contrary documentation, the Administrator is entitled to presume that the
4 Workweeks contained in the Class Notice are correct so long as they are consistent with the Class
5 Data. The Administrator's determination of each Class Member's allocation of Workweeks
6 and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
7 Administrator shall promptly provide copies of all challenges to the calculation of Workweeks
8 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
9 of the challenges.

10 **7.7 Objections to Settlement.**

11 7.7.1 Only Participating Class Members may object to the class action components of the
12 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
13 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
14 Payment and/or Class Representative Service Payments.

15 7.7.2 Participating Class Members may send written objections to the Administrator, by
16 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
17 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
18 Participating Class Member who elects to send a written objection to the Administrator must do
19 so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional
20 14 days for Class Members whose Class Notice was re-mailed).

21 7.7.3 Non-Participating Class Members have no right to object to any of the class action
22 components of the Settlement.

23 **7.8 Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be
24 performed or observed by the Administrator contained in this Agreement or otherwise.

25 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish,
26 maintain and use an internet website to post information of interest to Class Members including
27 the date, time and location for the Final Approval Hearing and copies of the Settlement
28 Agreement; Motion for Preliminary Approval; Preliminary Approval Order; Class Notice;

1 Motion for Final Approval; Motion for Class Counsel Fees Payment, Class Counsel Litigation
2 Expenses Payment and Class Representative Service Payments; the Final Approval Order; and
3 the Judgment. The Administrator will also maintain and monitor an email address and a toll-free
4 telephone number to receive Class Member calls, faxes and emails.

5 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
6 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later
7 than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the
8 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
9 and other identifying information of Class Members who have timely submitted valid Requests
10 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
11 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
12 Exclusion from Settlement submitted (whether valid or invalid).

13 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports
14 to Class Counsel and Defense Counsel that, among other things, tally the number of: Class
15 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether
16 valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods
17 received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA
18 Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment
19 of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and
20 objections received.

21 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to
22 address and make final decisions consistent with the terms of this Agreement on all Class Member
23 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision
24 shall be final and not appealable or otherwise susceptible to challenge.

25 7.8.5 Administrator’s Declaration. Not later than fourteen (14) days before the date by
26 which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
28 for filing in Court attesting to its due diligence and compliance with all of its obligations under

1 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
2 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
3 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
4 number of written objections and attach the Exclusion List. The Administrator will supplement
5 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
6 for filing the Administrator's declaration(s) in Court.

7 7.8.6 Final Report by Settlement Administrator. Within ten (10) days after the
8 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
9 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
10 identification number only of all payments made under this Agreement. At least fifteen (15) days
11 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
12 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
13 of all payments required under this Agreement. Class Counsel is responsible for filing the
14 Administrator's declaration in Court.

15 8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records,
16 Defendants represented that there are approximately **785** Class Members who collectively worked
17 a total of approximately **34,650** Workweeks during the Class Period, and approximately **382**
18 Aggrieved Employees who worked a total of approximately **13,000** PAGA Pay Periods from
19 September 11, 2022 through October 25, 2024. If the total number of Workweeks increases by
20 more than 10% (i.e., to greater than **38,115** Workweeks), then Defendants must increase the Gross
21 Settlement Amount proportionally by the Workweeks worked in excess of 38,115 Workweeks
22 multiplied by the per Workweek value of \$26.44. If this escalator clause is triggered, the Parties
23 agree that the portion of the Gross Settlement Amount allocated to Class Counsel Fees will
24 increase proportionally such that the total amount of Class Counsel Fees remains one-third of the
25 Gross Settlement Amount after the upward adjustment required by this provision is implemented.

26 9. **DEFENDANTS' RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion
27 identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may,
28 but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if

Defendants withdraw, 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, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants 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 16 (sixteen) court days before the calendared Final Approval Hearing, unless otherwise scheduled by the Court, 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. (l); a Proposed Final Approval Order; and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel 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 (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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

1 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
2 and (iii) addressing such post-Judgment matters as are permitted by law.

3 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
4 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
5 Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective
6 counsel, and all Participating Class Members who did not object to the Settlement as provided in
7 this Agreement, waive all rights to appeal from the Judgment, including all rights to post-
8 judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new
9 trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the
10 right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties'
11 obligations to perform under this Agreement will be suspended until such time as the appeal is
12 finally resolved and the Judgment becomes final, except as to matters that do not affect the amount
13 of the Net Settlement Amount.

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

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

27 12. **ADDITIONAL PROVISIONS**.
28

1 12.1 No Admission of Liability, Class Certification or Representative Manageability for
2 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
3 claims. Nothing in this Agreement is intended or should be construed as an admission by
4 Defendants that any of the allegations in the Operative Complaint has merit or that Defendants
5 have any liability for any claims asserted; nor should it be intended or construed as an admission
6 by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class
7 certification and representative treatment is for purposes of this Settlement only. If, for any
8 reason, the Court does not grant Preliminary Approval, Final Approval, or enter Judgment,
9 Defendants reserve the right to contest certification of any class for any reason, Defendants
10 reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move
11 for class certification on any grounds available and to contest Defendants' defenses. The
12 Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on,
13 and will not be admissible in connection with, any litigation (except for proceedings to enforce
14 or effectuate the Settlement and this Agreement).

15 12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants,
16 and Defense Counsel separately agree that, until the Motion for Preliminary Approval of
17 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause
18 or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement
19 directly or indirectly, specifically or generally, to any person, corporation, association,
20 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
21 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
22 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
23 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
24 government agency. Each Party agrees to immediately notify the other Party of any judicial or
25 agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel,
26 Defendants, and Defense Counsel separately agree not to, directly or indirectly, initiate any
27 conversation or other communication, before the filing of the Motion for Preliminary Approval,
28 with any third party regarding this Agreement or the matters giving rise to this Agreement except

1 to respond only that “the matter was resolved,” or words to that effect. This paragraph does not
2 restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s
3 ethical obligations owed to Class Members.

4 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and
5 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
6 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability
7 to communicate with Class Members in accordance with Class Counsel’s ethical obligations
8 owed to Class Members.

9 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
10 together with its attached exhibits shall constitute the entire agreement between the Parties
11 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
12 inducements made to or by any Party.

13 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
14 represent that they are authorized by Plaintiffs and Defendants, respectively, to take all
15 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
16 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
17 terms of this Agreement including any amendments to this Agreement.

18 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
19 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
20 Settlement Agreement, submitting supplemental evidence and supplementing points and
21 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
22 or content of any document necessary to implement the Settlement, or on any modification of the
23 Agreement that may become necessary to implement the Settlement, the Parties will seek the
24 assistance of a mediator and/or the Court for resolution.

25 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
26 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
27 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
28 action, or right released and discharged by the Party in this Settlement.

1 12.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are
2 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
3 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
4 Part 10, as amended) or otherwise.

5 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
6 modified, changed, or waived only by an express written instrument signed by all Parties or their
7 representatives, and approved by the Court.

8 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure
9 to the benefit of, the successors of each of the Parties.

10 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
11 governed by and interpreted according to the internal laws of the state of California, without
12 regard to conflict of law principles.

13 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
14 of this Agreement. This Agreement will not be construed against any Party on the basis that the
15 Party was the drafter or participated in the drafting.

16 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
17 entered during Action and in this Agreement relating to the confidentiality of information shall
18 survive the execution of this Agreement.

19 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to
20 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel
21 by Defendants in connection with the mediation, other settlement negotiations, or in connection
22 with the Settlement, may be used only with respect to this Settlement, and no other purpose, and
23 may not be used in any way that violates any existing contractual agreement, statute, or rule of
24 court. Not later than 90 days after the date when the Court discharges the Administrator's
25 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs
26 shall destroy, all paper and electronic versions of Class Data received from Defendants unless,
27 prior to the Court's discharge of the Administrator's obligation, Defendants makes a written
28 request to Class Counsel for the return, rather than the destruction, of Class Data.

12.15 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.

12.16 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.

12.17 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:

LIDMAN LAW, APC
 Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
 Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
 2155 Campus Drive, Suite 150
 El Segundo, California 90245
 Tel: (424) 322-4772
 Fax: (424) 322-4775

HAINES LAW GROUP, APC
 Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
 2155 Campus Drive, Suite 180
 El Segundo, California 90245
 Tel: (424) 292-2350
 Fax: (424) 292-2355

D.LAW, INC.
 Emil Davtyan (SBN 299363)
emil@d.law
 David Yeremian (SBN 226337)
d.yeremian@d.law
 David Keledjian (SBN 309135)
d.keledjian@d.law
 David Arakelyan (SBN 337076)
d.arakelyan@d.law
 Enoch J. Kim (SBN 261146)
e.kim@d.law
 450 N. Brand Blvd. Ste. 840

Glendale, CA 91203
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

To Defendants:

BAKER & MCKENZIE, LLP
Michael E. Brewer (SBN 177912)
michael.brewer@bakermckenzie.com
Two Embarcadero Center, 11th Floor
San Francisco, CA 94111-3802
Telephone: (415) 576 – 3000
Facsimile: (415) 576 – 3099

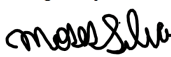
12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same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

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED.

By the Parties:

DATED: 5/28/2025

Signed by:

C5328BB6403645F...

Plaintiff MOSES SILVA

1 DATED: _____

2 Plaintiff HERNAN NOTARIO CAZARIN

5 DATED: _____

6 Defendant U.C.I. CONSTRUCTION, INC.

7 By: _____

8 Position: _____

11 DATED: _____

12 Defendant COREY DELTA CONSTRUCTORS, INC.

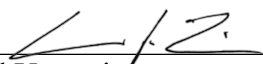
13 By: _____

14 Position: _____

17 Approved by Counsel:

18 DATED: May 28, 2025

19 D.LAW, INC.

20 BY:  _____

21 David Yeremian

22 David Keledjian

23 David Arakelyan

24 Enoch J. Kim

Counsel for Plaintiff Moses Silva

25 DATED: May __, 2025

26 HAINES LAW GROUP, APC

27 BY: _____

28 Paul K. Haines

1 DATED: 5/29/2025

Hernan Notario Cazarin

2 Plaintiff HERNAN NOTARIO CAZARIN

3
4
5 DATED: _____

6 Defendant U.C.I. CONSTRUCTION, INC.

7 By: _____

8 Position: _____

9
10
11 DATED: _____

12 Defendant COREY DELTA CONSTRUCTORS, INC.

13 By: _____

14 Position: _____

15
16
17 Approved by Counsel:

18
19 DATED: May 28, 2025

D.LAW, INC.

20
21 BY: [Signature]

22 David Yeremian

David Keledjian

David Arakelyan

Enoch J. Kim

23 Counsel for Plaintiff Moses Silva

24
25 DATED: June 2, 2025

HAINES LAW GROUP, APC

26
27 BY: [Signature]

28 Paul K. Haines

Counsel for Plaintiff Hernan Notario Cazarin

DATED: June 2, 2025

LIDMAN LAW, APC

BY: 

Scott M. Lidman
Milan Moore
Counsel for Plaintiff Hernan Notario Cazarin

DATED: April __, 2025

BAKER & MCKENZIE, LLP

BY: _____
Michael Brewer
Attorneys for Defendants U.C.I. Construction, Inc. and
Corey Delta Constructors, Inc.

1 DATED: _____

2 Plaintiff HERNAN NOTARIO CAZARIN

3
4
5 DATED: 5-30-2025

Timothy J. Holz

7 Defendant U.C.I. CONSTRUCTION, INC.

8 By: TIMOTHY J. HOLZ

9 Position: CHIEF EXECUTIVE OFFICER

10
11 DATED: 5-30-2025

Timothy J. Holz

13 Defendant COREY DELTA CONSTRUCTORS, INC.

14 By: TIMOTHY J. HOLZ

15 Position: PRESIDENT

16
17 Approved by Counsel:

18
19 DATED: May 28, 2025

D.LAW, INC.

21 BY: [Signature]

22 David Yeremian

23 David Keledjian

24 David Arakelyan

25 Enoch J. Kim

26 Counsel for Plaintiff Moses Silva

27 DATED: May __, 2025

HAINES LAW GROUP, APC

28 BY: _____

Paul K. Haines

Counsel for Plaintiff Hernan Notario Cazarin

DATED: April __, 2025

LIDMAN LAW, APC

BY: _____
Scott M. Lidman
Milan Moore
Counsel for Plaintiff Hernan Notario Cazarin

DATED: ~~April __, 2025~~
May 30, 2025

BAKER & MCKENZIE, LLP

BY:  _____
Michael Brewer
Attorneys for Defendants U.C.I. Construction, Inc. and
Corey Delta Constructors, Inc.

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

U.C.I. Construction, Inc.

C T Corporation System, Agent for Service of Process
330 N. Brand Blvd., Glendale, CA 91203

Certified Mail Tracking Number: 9414-8112-0620-3071-9806-60

Corey Delta Constructors, Inc.

C T Corporation System, Agent for Service of Process
330 N. Brand Blvd., Glendale, CA 91203

Certified Mail Tracking Number: 9414-8112-0620-3071-9010-16

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Silva v. U.C.I. Construction, et al.***

Gentlepersons:

This office represents Plaintiff Moses Silva (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 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”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, including those misclassified as independent contractors and/or staffed through third-party agencies, and the State of California, against Defendants, U.C.I. Construction, Inc., Corey Delta Constructors, 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 Contra Costa 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 in addition to workers misclassified as independent contractors 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").

Some Aggrieved Employees were employed by Defendants, but misclassified as independent contractors in violation of Labor Code § 226.8 in that Class Members: (A) were not free from Defendants' control and direction in the performance of their work; (B) performed work within the usual course of Defendants' business; and (C) did not engage in an independently established trade, occupation, or business that was different than the nature of the work performed by Defendants.

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. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Aggrieved Employees by systematically undercompensating them.

Next, Aggrieved Employees were also consistently required to perform both pre-shift and post shift work, off-the-clock, for which no wages were paid. Prior to clocking in, Aggrieved Employees were systemically required to arrive to work early, and wait to be granted access onto Defendant's premises. Once allowed onto the worksite, Aggrieved Employees were required to spend time donning their work clothes and boots. Aggrieved Employees were then required to undergo mandatory security checks to gain access to the building. Finally, Aggrieved Employees had to spend time locating their respective supervisors in order to clock into to work. This entire process was repeated, including having to doff their work clothes and boots, after the completion of Aggrieved Employees' scheduled shifts, and after clocking out for the day. All 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 the California Law. First, Aggrieved Employees were regularly denied meal periods altogether. Moreover, Aggrieved Employees were prohibited from leaving the work premises during meal periods, when such meal periods were taken. Additionally, due to understaffing and heavy workloads, as well as the uncompensated work discussed above, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work.

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; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; and (3) Defendants' practice of requiring putative Aggrieved Employees to remain on the premises during breaks, including meal periods, and (4) Defendants' policy and 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 breaks 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 Aggrieved Employees to continue working through their rest breaks due to the excessive workload; and (4) Defendants' policy and practice of requiring Aggrieved Employees to remain on the premises during breaks, including meal periods

Furthermore, Defendants failed to pay Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and rest period denied.

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. Aggrieved Employees’ wage statement were only provided in electronic format in violation of Labor Code § 226.

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

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.



is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

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

Defendants 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. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Aggrieved Employees by systematically undercompensating them.

Next, Aggrieved Employees were also consistently required to perform both pre-shift and post shift work, off-the-clock, for which no wages were paid. Prior to clocking in, Aggrieved Employees were systemically required to arrive to work early, and wait to be granted access onto Defendant's premises. Once allowed onto the worksite, Aggrieved Employees were required to spend time donning their work clothes and boots. Aggrieved Employees were then required to undergo mandatory security checks to gain access to the building. Finally, Aggrieved Employees had to spend time locating their respective supervisors in order to clock into to work. This entire process was repeated, including having to doff their work clothes and boots, after the completion of Aggrieved Employees' scheduled shifts, and after clocking out for the day.

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). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages,



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

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

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

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. 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, 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.

Additionally, all the uncompensated time, discussed above, 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.



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

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

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

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

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with the California Law. First, Aggrieved Employees were regularly denied meal periods altogether. Moreover, Aggrieved Employees were prohibited from leaving the work premises during meal periods, when such meal periods were taken. Additionally, due to understaffing and heavy workloads, as well as the uncompensated work discussed above, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work.

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; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Aggrieved Employees of their meal and rest period rights; (3) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload; (4) Defendants' policy and practice of requiring Aggrieved Employees to remain on the premises during both meal periods and rest breaks.

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. Specifically, Aggrieved Employees were required to work through their rest breaks, which were systemically denied. Additionally, Defendants implemented a policy and practice of requiring Aggrieved Employees to remain on the premises during both meal periods and rest breaks.

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

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

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

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Aggrieved Employees were required to purchase their own work tools necessary for Aggrieved Employees to execute their duties under Defendants' employ, and for which no reimbursements were paid in violation of Labor Code § 2802.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this



Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

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

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

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

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



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

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

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

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



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

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

Waiting Time Penalties Pursuant to Labor Code § 203

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

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

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

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



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

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

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802, including as follows:

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

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



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

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

(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).

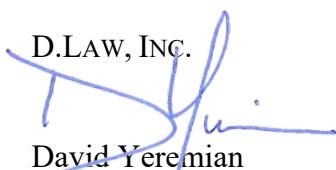
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case 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 Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW, INC.


David Yeremian

Cc: U.C.I. Construction, Inc., Corey Delta Constructors, Inc.

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
880 E. Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Attorneys for Plaintiff MOSES SILVA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

MOSES SILVA, on behalf of himself
and all others similarly situated, and the
general public,

Plaintiff,

v.

U.C.I. CONSTRUCTION, INC., a California
corporation; COREY DELTA
CONSTRUCTORS, 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 Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Failure to Indemnify (Lab. Code § 2802); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff MOSES SILVA (“Plaintiff”), on behalf of himself, all others similarly situated, and
2 the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants U.C.I. CONSTRUCTION, INC.,
5 a California corporation; COREY DELTA CONSTRUCTORS, INC., a California Corporation; and
6 DOES 1 through 50, inclusive, (collectively referred to as “Defendants”) for alleged violations of the
7 California Labor Code and California Business and Professions Code. As set forth below, Plaintiff
8 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 provide them with accurate written wage statements;
17 h. failed to reimburse them with necessary business expenditures; and
18 i. failed to pay them all of their final wages following separation of employment.

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

22 **JURISDICTION AND VENUE**

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

26 3. Venue is proper in the County of Contra Costa pursuant to Code of Civil Procedure
27 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
28 that are the subject matter of this Complaint occurred therein and/or each defendant is found,

mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

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

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

- a. **Hourly Employee Class:** All persons employed by Defendants, collectively or separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions, including those misclassified as independent contractors, 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”).
- b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in 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.
- c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a 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.
- d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who 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.
- e. **Wage Statement Class:** All persons employed by Defendants, including those misclassified as independent contractors, in California during the period beginning one year before the filing of this action and ending when final judgment is entered.
- f. **Expense Reimbursement Class:** All persons employed by Defendants, including those misclassified as independent contractors, in California who incurred business expenses during the **Relevant Time Period**.
- g. **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.

13. **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.

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

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

- 8 a. Whether Defendants maintained a policy or practice of failing to provide
9 employees with their rest periods;
- 10 b. Whether Defendants maintained a policy or practice of failing to provide
11 employees with their meal periods;
- 12 c. Whether Defendants failed to pay premium wages to class members when they
13 have not been provided with meal and rest periods at the appropriate rates of pay;
- 14 d. Whether Defendants failed to pay minimum and/or overtime wages to class
15 members for all time worked;
- 16 e. Whether Defendants failed to provide class members with accurate written wage
17 statements as a result of providing them with written wage statements with
18 inaccurate entries for, among other things, amounts of gross and net wages, and
19 total hours worked;
- 20 f. Whether Defendants applied policies or practices that result in late and/or
21 incomplete final wage payments;
- 22 g. Whether Defendants failed to reimburse class members for all necessary business
23 expenses incurred during the discharge of their duties;
- 24 h. Whether Defendants are liable to class members for waiting time penalties under
25 Labor Code section 203; and
- 26 i. Whether class members are entitled to restitution of money or property that
27 Defendants may have acquired from them through unfair competition;

28 16. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff

1 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
2 comply with the California Labor Code and Business and Professions Code as alleged in this
3 Complaint.

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

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

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

22 **GENERAL ALLEGATIONS**

23 20. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
24 statutory periods.

25 21. Some Class Members were employed by Defendants, but misclassified as independent
26 contractors in violation of Labor Code § 226.8 in that Class Members: (A) were not free from
27 Defendants' control and direction in the performance of their work; (B) performed work within the
28 usual course of Defendants' business; and (C) did not engage in an independently established trade,

1 occupation, or business that was different than the nature of the work performed by Defendants.

2 22. Defendants had a common policy and practice of systemically failing to pay Plaintiff
3 and Class members proper wages and overtime for all hours worked, at the proper rates of pay. First,
4 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
5 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay
6 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
7 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
8 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
9 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
10 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
11 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
12 them.

13 23. Next, Plaintiff and Class Members were also consistently required to perform both
14 pre-shift and post shift work, off-the-clock, for which no wages were paid. Prior to clocking in,
15 Plaintiff and Class Members were systemically required to arrive to work early, and wait to be granted
16 access onto Defendant's premises. Once allowed onto the worksite, Plaintiff and Class Members were
17 required to spend time donning their work clothes and boots. Plaintiff and Class Members were then
18 required to undergo mandatory security checks to gain access to the building. Finally, Plaintiff and
19 Class Members had to spend time locating their respective supervisors in order to clock into to work.
20 This entire process was repeated, including having to doff their work clothes and boots, after the
21 completion of Plaintiff and Class Members' scheduled shifts, and after clocking out for the day.

22 24. The forgoing and uncompensated working time was under the direction and control
23 of Defendants, for which no wages were paid.

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

27 26. Defendants had a common policy and practice of systemically denying Plaintiff and
28 Class Members the opportunity to take meal periods in compliance with the California Law. First,

1 Plaintiff and Class Members were regularly denied meal periods altogether. Moreover, Plaintiff and
2 Class Members were prohibited from leaving the work premises during meal periods, when such meal
3 periods were taken. Additionally, due to understaffing and heavy workloads, as well as the
4 uncompensated work discussed above, Plaintiff and Class Members were denied the opportunity to
5 take timely meal periods prior to the completion of their fifth hour of work.

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

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

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

1 or other indelible form.”

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

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

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

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

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

17 36. Plaintiff and Class Members were not reimbursed for business expenses incurred in
18 executing their duties under Defendant’s employ. Specifically, Plaintiff and Class Members were
19 required to pay the costs of their work tools, necessary to perform their duties under Defendants’
20 employ. Plaintiff and Class members were not reimbursed for these necessary work-related expenses.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

25 37. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
26 fully alleged herein.

27 38. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
28 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor

1 Code and the applicable Industrial Welfare Commission Wage Order.

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

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

11 41. Compensation for missed meal periods constitutes wages within the meaning of Labor
12 Code section 200.

13 42. Labor Code section 1198 makes it unlawful to employ a person under conditions that
14 violate the applicable Wage Order.

15 43. Section 11 of the applicable Wage Order states:

16 “No employer shall employ any person for a work period of more than five (5) hours
17 without a meal period of not less than 30 minutes, except that when a work period of
18 not more than six (6) hours will complete the day’s work the meal period may be
19 waived by mutual consent of the employer and employee. Unless the employee is
20 relieved of all duty during a 30 minute meal period, the meal period shall be considered
21 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
22 be permitted only when the nature of the work prevents an employee from being
23 relieved of all duty and when by written agreement between the parties an on-the-job
24 paid meal period is agreed to. The written agreement shall state that the employee
25 may, in writing, revoke the agreement at any time.”

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

29 45. Plaintiff alleges that, at all relevant times during the applicable limitations period,
30 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
31 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
32 hour work period, as required by Labor Code section 512 ad the applicable Wage Order. First,

1 Plaintiff and **Meal Period Sub-Class** members were regularly denied meal periods altogether.
2 Moreover, Plaintiff and **Meal Period Sub-Class** members were prohibited from leaving the work
3 premises during meal periods, when such meal periods were taken. Additionally, due to understaffing
4 and heavy workloads, as well as the uncompensated work discussed above, Plaintiff and **Meal Period**
5 **Sub-Class** members were denied the opportunity to take timely meal periods prior to the completion
6 of their fifth hour of work.

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

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

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

16 49. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
17 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
18 regular rates of pay when required meal periods were not provided.

19 50. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
20 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
21 thereon, and costs of suit.

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

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1 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
2 encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class**
3 members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest Period**
4 **Sub-Class** members to remain on the premises during their rest breaks; (4) Defendants' policy and
5 practice of requiring **Rest Period Sub-Class** members to continue working through their rest breaks
6 due to the excessive workloads.

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

9 61. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
10 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
11 costs of suit.

12 62. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
13 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest**
14 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

15 **THIRD CAUSE OF ACTION**

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

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

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

19 63. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

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

24 65. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
25 which an employee is subject to the control of the employer, and includes all the time the employee
26 is suffered or permitted to work, whether or not required to do so."

27 66. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
28 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours

1 that an employer has actual or constructive knowledge that employees are working.

2 67. Labor Code section 1194 invalidates any agreement between an employer and an
3 employee to work for less than the minimum or overtime wage required under the applicable Wage
4 Order.

5 68. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
6 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
7 to the underlying unpaid minimum wages and interest thereon.

8 69. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
9 than the minimum wage required under the applicable Wage Order for all hours worked during a
10 payroll period.

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

14 71. Labor Code section 1198 makes it unlawful for employers to employ employees under
15 conditions that violate the applicable Wage Order.

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

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

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

27 75. Labor Code section 510 and Section 3 of the applicable Wage Order also require
28 employers to pay non-exempt employees overtime wages of no less than two times their respective

1 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
2 worked in excess of eight hours on a seventh consecutive workday during the workweek.

3 76. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
4 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
5 working conditions and compensation arrangements.

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

9 78. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
10 overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful
11 time-rounding policy and practice which rounded down and reduced the actual working hours
12 recorded by Plaintiff and **Hourly Employee Class**, and upon which their pay was based, and
13 generally did so to the detriment of the Plaintiff and **Hourly Employee Class**, and these unlawfully
14 rounded time entries were inputted into Defendants' payroll system from which wage statements and
15 payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and
16 **Hourly Employee Class** members only for the hours they were scheduled to work, rather than the
17 hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and
18 results, over time, to the detriment of the Plaintiff and **Hourly Employee Class** members by
19 systematically undercompensating them.

20 79. Next, Plaintiff and **Hourly Employee Class** members were also consistently required
21 to perform both pre-shift and post shift work, off-the-clock, for which no wages were paid. Prior to
22 clocking in, Plaintiff and **Hourly Employee Class** members were systemically required to arrive to
23 work early, and wait to be granted access onto Defendant's premises. Once allowed onto the worksite,
24 Plaintiff and **Hourly Employee Class** members were required to spend time donning their work
25 clothes and boots. Plaintiff and **Hourly Employee Class** members were then required to undergo
26 mandatory security checks to gain access to the building. Finally, Plaintiff and **Hourly Employee**
27 **Class** members had to spend time locating their respective supervisors in order to clock into to work.
28 This entire process was repeated, including having to doff their work clothes and boots, after the

1 completion of Plaintiff and **Hourly Employee Class** members' scheduled shifts, and after clocking
2 out for the day. All the forgoing and uncompensated working time was under the direction and control
3 of Defendants, for which no wages were paid.

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

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

12 82. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
13 behalf of himself and **Hourly Employee Class** members, seek to recover unpaid straight time and
14 overtime wages, interest thereon and costs of suit.

15 83. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
16 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
17 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

18 **FOURTH CAUSE OF ACTION**

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

20 **(Lab. Code § 226)**

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

22 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
23 herein.

24 85. Labor Code section 226(a) states:

25 "An employer, semimonthly or at the time of each payment of wages, shall furnish to
26 his or her employee, either as a detachable part of the check, draft, or voucher paying
27 the employee's wages, or separately if wages are paid by personal check or cash, an
28 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
worked by the employee, except as provided in subdivision (j), (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, provided that all deductions made on written orders of

1 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
2 inclusive dates of the period for which the employee is paid, (7) the name of the
3 employee and only the last four digits of his or her social security number or an
4 employee identification number other than a social security number, (8) the name and
5 address of the legal entity that is the employer and, if the employer is a farm labor
6 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
7 legal entity that secured the services of the employer, and (9) all applicable hourly
8 rates in effect during the pay period and the corresponding number of hours worked at
9 each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
10 temporary services employer as defined in Section 201.3, the rate of pay and the total
11 hours worked for each temporary services assignment. The deductions made from
12 payment of wages shall be recorded in ink or other indelible form, properly dated,
13 showing the month, day, and year, and a copy of the statement and the record of the
14 deductions shall be kept on file by the employer for at least three years at the place of
15 employment or at a central location within the State of California. For purposes of
16 this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
17 employee or a computer-generated record that accurately shows all of the information
18 required by this subdivision."

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

25 87. Plaintiff is informed and believes that, at all relevant times during the applicable
26 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
27 wage statements as described above. Additionally, the wage statements issued to class members
28 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
above.

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

89. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
Statement Class members with accurate written wage statements were intentional in that Defendants
have the ability to provide them with accurate wage statements but have intentionally provided them

1 with written wage statements that Defendants have known do not comply with Labor Code section
2 226(a).

3 90. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
4 Defendants have violated their legal rights to receive accurate wage statements and have misled them
5 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
6 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
7 discovery and mathematical computations to determine the amount of wages owed, has caused
8 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
9 submission of inaccurate information about wages and deductions to federal and state government
10 agencies.

11 91. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
12 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
13 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
14 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
15 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

16 **FIFTH CAUSE OF ACTION**

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

18 **(Lab. Code §§ 201-203)**

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

20 92. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

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

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

27 95. At all relevant times, pursuant to Labor Code section 202, employees who have
28 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to

1 payment of all final wages at the time of resignation.

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

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

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

14 99. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
15 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
16 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

17 100. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
18 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-**
19 **Class** members, seek awards of reasonable attorneys' fees and costs.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO INDEMNIFY**

22 **(Lab. Code § 2802)**

23 **(Plaintiff and Reimbursement Class)**

24 101. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
25 herein.

26 102. Labor Code section 2802(a) states:

27 "An employer shall indemnify his or her employee for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of his or her
duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them to
2 be unlawful.”

3 103. Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for
4 business expenses incurred in executing their duties under Defendant’s employ. Specifically, Plaintiff
5 and **Expense Reimbursement Class Members** were required to purchase their own work tools
6 necessary to perform their duties under Defendants’ employ. Plaintiff and **Expense Reimbursement**
7 **Class Members** were not reimbursed for these necessary work-related expenses.

8 104. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
9 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
10 Complaint and until the date of entry of judgment.

11 105. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks
12 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys’ fees
13 pursuant to Code of Civil Procedure section 1021.5.

14 **SEVENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

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

17 **(Plaintiff and UCL Class)**

18 106. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
19 herein.

20 107. Business and Professions Code section 17200 defines “unfair competition” to include
21 any unlawful business practice.

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

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

110. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST, SECOND, THIRD, and SIXTH causes of action herein.

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

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

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

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

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

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

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

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

119. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive

1 for “any unlawful, unfair or fraudulent business act or practice,” including if a practice or act violates
2 or is considered unlawful under any other state or federal law.

3 120. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
4 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
5 Defendants, and each of them, and their agents and employees, from further violations of the Labor
6 Code and applicable Wage Orders.

7 121. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
8 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
9 Defendants, and each of them, and their agents and employees, from further violations of the Labor
10 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
11 order permanently enjoining Defendants, and each of them, and their respective agents and
12 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
13 Wage Orders.

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

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

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

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

28 ///

1 **PRAYER FOR RELIEF**

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

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

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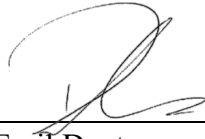
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- 1 l. Costs of suit;
2 m. Reasonable attorneys' fees; and
3 n. Such other relief as the Court deems just and proper.
4

5 Dated: September 11, 2023

D.LAW, INC.

6
7 

8 _____
9 Emil Davtyan
10 David Yeremian
11 David Keledjian
12 Attorneys for Plaintiff
13 MOSES SILVA, and the putative class

11 **DEMAND FOR JURY TRIAL**

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

15 Dated: September 11, 2023

D.LAW, INC.

16
17 

18 _____
19 Emil Davtyan
20 David Yeremian
21 David Keledjian
22 Attorneys for Plaintiff
23 MOSES SILVA , and the putative class
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EXHIBIT 3