

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Antonia McKee (SBN 344511)
a.bliznets@d.law
450 N Brand Blvd., Suite 840
Glendale, California 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff ANGELINA FAGUNDO,
on behalf of herself and others similarly situated

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

ANGELINA FAGUNDO, an individual, on
behalf of herself and others similarly
situated,

Plaintiff,

vs.

NORTH COAST OPPORTUNITIES, INC. a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 23CV00840

CLASS ACTION

Assigned for All Purposes To:
Hon. Ann Morman

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

Date: June 13, 2025
Time: 9:30 a.m.
Dept.: E

Original Complaint Filed: September 6, 2023
First Amended Complaint: November 13, 2023
Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiff Angelina Fagundo (“Plaintiff”), on behalf of herself and all other similarly situated employees of Defendant North Coast Opportunities, Inc. (“Defendant”) (Plaintiff and Defendant are collectively referred to herein as “the Parties”).

9
10
11
12

13

14
15
16
17
18

19
20
21
22
23
24
25
26

28

5. Plaintiff submitted a PAGA notice (LWDA-CM-979783-23) to the Labor and Workforce Development Agency (“LWDA”) on September 5, 2023. A true and correct copy of the PAGA notice is attached hereto as **Exhibit 2**. On November 13, 2023, Plaintiff filed her First Amended Complaint (“Operative Complaint”), which adds claims for penalties under PAGA, Labor Code §2698. (*Id.*)

6. Plaintiff contends that Defendant failed to pay all wages due and owing by requiring off the clock work and unlawfully rounding time, failing to pay overtime, failing to create and maintain accurate records, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse necessary business expenses.

Investigation

7. Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts.

8. Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation.

1 Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims
2 and explore the possibility of settlement.

3 **Settlement Efforts**

4 9. On February 6, 2025, the Parties participated in an all-day mediation with Todd
5 Smith, Esq., a respected and highly experienced mediator in wage and hour class actions, and were
6 able to reach an agreement on general settlement terms. During mediation, counsel for Plaintiff and
7 Defendant discussed all aspects of the case, including the risks of litigation and the risks to both
8 parties of proceeding with a class certification motion, as well as the law unpaid wages, meal
9 periods, rest periods, wage statements, and final pay. Following a full day of mediation, the Parties
10 agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together on
11 a long form settlement agreement following mediation, which resulted in the Settlement Agreement
12 now before the Court for approval.

13 10. From Class Counsel's review of the facts, strengths, and weaknesses of the case and
14 the risks and delays posed by further litigation, Class Counsel believes that the recovery for each
15 Class Member is fair and reasonable taking into consideration the risks of further litigation, the
16 possibility of losing class certification and/or dispositive motions, and the reasonable tailoring of
17 each Class Member's claim to the settlement award he or she will receive. Further, the Settlement
18 Agreement was the product of a non-collusive settlement process in which the Parties were forced
19 to make significant compromises in the interest of reaching a full and complete settlement of the
20 lawsuit.

21 **Summary of the Settlement**

22 11. Under the terms of the proposed Settlement Agreement Defendant has agreed to pay
23 \$575,000.00 (Five Hundred Seventy-Five Thousand Dollars and Zero Cents) ("Gross Settlement
24 Amount" or "GSA") on a non-reversionary basis. (Exhibit 1, Settlement Agreement, ¶ 3.1). In
25 addition to and separate from the Gross Settlement Amount, Defendant will pay the employers'
26 portion of any payroll taxes on the wage allocation portion of the individual settlement payments to
27 Class Members. The Settlement Agreement defines the "Class" as "all non-exempt, hourly
28 individuals employed by Defendant, who did not sign an arbitration agreement with Defendant, in

California during the Class Period,” which is September 6, 2019, through April 7, 2025.² (Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12). The Settlement Agreement also defines “Aggrieved Employees” as “all non-exempt, hourly individuals employed by Defendant in California during the PAGA Period,” which is September 5, 2022, through April 7, 2025. (Exhibit 1, Settlement Agreement, ¶¶ 1.4, 1.31). The “Net Settlement Amount,” available for distribution to Class Members, is the Gross Settlement Amount, less the PAGA Penalties payment, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Costs Payment, and the Settlement Administration Costs. (Exhibit 1, Settlement Agreement, ¶ 1.29.) These amounts are detailed as follows:

- Class Counsel Fees and Litigation Expenses Payment: Up to 35% of the Gross Settlement Amount, or **\$201,250.00**, to Class Counsel as attorneys’ fees for the litigation and resolution of this Action and up to **\$35,000.00** for actual costs incurred in this Action. (Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Representative Enhancement Award: Up to **\$10,000.00** to Plaintiff as an award for her service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Settlement Administration Costs: A not-to-exceed amount of **\$9,000.00** to the Settlement Administrator for its fees and costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3);
- PAGA Penalties: **\$50,000.00** for settlement of claims for civil penalties under PAGA, with 25% (\$12,500.00) to be paid on a pro-rata basis to the Aggrieved Employees (“Individual PAGA Payments”) and 75% (\$37,500.00) allocated to the LWDA (“LWDA PAGA Payment”) (Exhibit 1, Settlement Agreement, ¶ 3.2.5).

12. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **\$269,750.00**. Twenty percent (20%) of the “Net Settlement Amount” will be allocated to the settlement of wage claims (the “Wage Portion”) and will be subject to tax withholding and reported on an IRS W-2 Form. Each Class Member’s share

² On May 21, 2025, Counsel for Parties amended the Agreement to clarify the Class and Aggrieved Employees definitions (“Amendment”). The Amendment is found at page 24 of the settlement agreement, attached hereto at Exhibit 1.

of the Net Settlement Amount (“Individual Class Payment”) will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Exhibit 1, Settlement Agreement, ¶ 1.23). For the approximately 265 Class Members (if no exclusions), the average gross Individual Share Payment, using a straight average, is \$1,017.92. If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Exhibit 1, Settlement Agreement, ¶¶ 3.2.1-3.2.5).

13. Not later than thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Information to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. The Settlement Administrator will mail the Class Notice with Spanish translation to all Class Members in no event later than fourteen (14) days following the receipt of Class Data via first class United States Postal Service (“USPS”) mail. (Exhibit 1, Settlement Agreement, ¶ 7.4.2). Before mailing the Class Notice, the Settlement Administrator will update Class Member addresses using the National Change of Address database. The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant’s records. (Exhibit A, Class Notice). Any mailing returned to the Settlement Administrator as undeliverable will be sent within seven (7) days via First Class U.S. Mail to the forwarding address affixed thereto, if applicable. If no forwarding address is provided, in no event later than three (3) days after the Administrator’s receipt of any Class Notices returned by the USPS as undelivered, the Settlement Administrator will conduct a Class Member Address Search and attempt to determine the correct address again using all reasonably available sources and methods, including the National Change of Address database and skip traces, and re-mail the Class Notice to the most current address obtained. Class Members will have sixty (60) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days if they receive a re-mailed Notice) to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods. (Exhibit 1, Settlement Agreement, ¶ 7.4.4). The parties selected Phoenix Settlement Administrators (“Phoenix”) to handle

1 the notice and administration of the Settlement based on the competitiveness of their bid, their
2 competency in administering settlements, and their responsiveness to the parties' counsel and
3 settlement class members. (Exhibit 1, Settlement Agreement, § 7.1). Phoenix will have a website
4 for Class Members to review and reference for details regarding the Final Approval Hearing and
5 any Final Approval Order and Judgement. If the Court grants final approval of the Settlement, a
6 copy of the Final Approval Order and Judgment will be posted on this website for Class Members
7 to review. The website will be provided to Class Members in the Class Notice that is mailed to them.
8 (Exhibit 1, Settlement Agreement, § 7.8.1).

9 **Certification for Settlement Purposes Only is Appropriate**

10 14. Plaintiff alleges that the proposed Class satisfies the criteria for certification of a
11 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
12 Defendant has agreed to the conditional certification of the class for settlement purposes only.
13 Defendant does not concede that certification is appropriate outside of this Settlement and preserves
14 all rights to oppose certification if, for any reason, the Settlement does not become effective. In
15 general, courts may take a proposed settlement into account in evaluating the propriety of class
16 certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser
17 standard” of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court
18 should take into consideration the fact that the Parties have settled their claims and stipulated to
19 certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

20 15. Numerosity and Ascertainability. The putative Class is so numerous that joinder of
21 all members is impractical. Class Members are “all non-exempt, hourly individuals employed by
22 Defendant, who did not sign an arbitration agreement with Defendant, in California during the Class
23 Period,” which is September 6, 2019, through April 7, 2025. Defendant has identified at least 265
24 Class Members based on a review of its payroll and personnel records. Thus, the requirements of
25 numerosity and ascertainability are met here.

26 16. Well-Defined Community of Interest. Plaintiff contends, and Defendant does not
27 dispute for settlement purposes only, that common issues of fact and law predominate as to each of
28 the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*,

1 a determination about Defendant's alleged failure to pay wages and overtime due to allegedly
2 common off-the-clock work, failing to pay overtime, failing to provide meal and rest breaks, failing
3 to furnish accurate wage statements, failing to timely pay wages including final wages, failing to
4 maintain accurate records, failing to reimburse necessary business expenses; and largely derivative
5 claims under the UCL and PAGA. Plaintiff contends Defendant's practices affected Class Members
6 in the same way and presents questions that are suitable for common adjudication because all Class
7 Members were subject to the same employment policies and practices. The outcome of litigation in
8 this matter depends upon questions that are common to Class Members.

9 17. Typicality. The class representatives' claims are typical when they arise from the
10 same event, practice, or course of conduct that gives rise to the claims of other putative Class
11 Members and if their claims rest on the same legal theories. Here, Plaintiff alleges that her claims
12 are typical of Class Members' claims because they arose from the same factual basis and are based
13 on the same legal theories. Plaintiff and Class Members were employed by Defendant during the
14 Class Period and were subject to the allegedly unlawful meal and rest policies and pay practices at
15 issue in this litigation. Thus, the typicality requirement is satisfied.

16 18. Adequacy. Plaintiff's interests are aligned with those of the Class Members, as she
17 has suffered the same injuries as the Class Members and has no conflicts of interest. Plaintiff has
18 not shrunk from this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and
19 energy to litigating this action and effectuating a settlement. Furthermore, as set forth below, Class
20 Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously
21 represented the interests of the class in litigating this case and have no conflicts of interest.
22 Accordingly, the adequacy requirement is satisfied.

23 19. Predominance and Superiority. Plaintiff contends that individualized issues do not
24 predominate over the issues of law and fact that are common to the Class as a whole. As explained,
25 *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class
26 Members were subjected to the same policies and pay practices during the relevant time period.
27 Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and
28 penalties for work performed as non-exempt employees for Defendant. Plaintiff alleges that these

1 issues are suitable for common adjudication because all Class Members were allegedly subject to
2 the same employment policies, and Plaintiff contends the practices applied uniformly to all Class
3 Members.

4 20. Plaintiff contends that class resolution is superior to other available methods for the
5 fair and efficient adjudication of the controversy as there is little interest or incentive for Class
6 Members to individually control the prosecution of separate actions. Although the alleged injury
7 resulting from Defendant's policies and practices are allegedly real and significant, the cost of
8 individually litigating each such case against Defendant would easily exceed the value of any relief
9 that could be obtained by any one Class Member individually. If Class Members are forced to litigate
10 their claims individually this would result in over 265 individual actions against Defendant. Here,
11 the alternative methods of resolution are individual suits for relatively small amounts. Hence, an
12 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
13 dwarf a potential recovery.

14 **The Settlement is Fair, Adequate, and Reasonable**

15 21. In deciding whether to approve a proposed class action settlement, the Court must
16 find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of
17 approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as
18 "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
20 the extent of discovery completed and the stage of the proceedings, the experience and views of
21 counsel, the presence of a governmental participant, and the reaction of the Class Members to the
22 proposed settlement." *Id.* The Settlement satisfies all of these requirements.

23 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.**

24 22. The proposed settlement was reached as a result of arm's length negotiations after
25 the completion of pertinent discovery and the exchange of necessary Class Information. The
26 negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on
27 Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will
28 presume that a proposed class action settlement is fair when certain factors are present, particularly

evidence that the settlement is the product of arms-length negotiation, untainted by collusion.”). Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiff’s claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured that negotiations were non-collusive and well-informed.

B. Extent of Discovery and Stage of Proceedings.

23. As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant’s defenses. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses.

C. Strength of Plaintiff’s Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

24. Plaintiff’s claims are based on Defendant’s alleged failure to pay wages and overtime due to allegedly common off-the-clock work, failure to create and maintain accurate records, failure to provide meal and rest breaks, failure to furnish accurate wage statements, failure to timely pay wages including final wages, failure to maintain accurate records, failure to reimburse necessary business expenses; and largely derivative claims under the UCL and PAGA.

25. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. Specifically, Plaintiff alleges that Defendant required Plaintiff and Class Members to manually input time entries into their electronic timekeeping system that comported with their scheduled shifts but did not reflect their actual hours worked, as well as perform pre-shift and post-shift off the clock work for which they were not paid. For instance, Plaintiff alleges that Class Members were required to arrive to work several minutes prior to the start of their scheduled shifts to open the office, stay late to clean and lock up and attend meetings, and work through lunch and rest periods. Plaintiff and Class Members’ meal periods were often

1 interrupted or cut short because a client would unexpectedly arrive, and they would have to attend
2 to that client. Furthermore, Plaintiff and Class Members were not permitted to record on Defendant's
3 timekeeping system that they started work before 8:00 AM or that they ended work after 5:00 PM.

4 26. Defendant contends that it did not require off the clock work, paid for all reported
5 hours worked, that any alleged off the clock work was performed without Defendant's knowledge,
6 that for the majority of Plaintiff's employment, Plaintiff and other Class Members worked remotely
7 so they had discretion to take meal and rest breaks which Defendant did not impede, and that it paid
8 wages at the proper rates. Defendant also argues that given its written policies and practices, any
9 unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the
10 difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on
11 this theory..

12 27. Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff
13 and Class Members. For example, Plaintiff alleges that Defendant's policy required Class Members
14 to clock out for their scheduled meal periods but continue working, especially when Defendant
15 required at least one employee to remain at the office at all times to attend to incoming clients, and
16 Class Members were not paid for this time that they remained under Defendant's control and were
17 not provided with the opportunity to take timely and complete meal periods and rest breaks. This
18 resulted in Plaintiff and Class Members working during their meal periods or missing their meal
19 periods entirely. Moreover, on days where Plaintiff and other Class members worked ten hours or
20 more, Plaintiff alleges that they did not receive a second meal period.

21 28. Defendant contends that Class Members were given a reasonable opportunity to take
22 their meal periods, and for the majority of Plaintiff and Class Members' employment, they worked
23 remotely and so had discretion to take meal breaks. Defendant further contends that the meal break
24 claim requires individualized inquiries which would preclude class certification. If Defendant's
25 contentions are proven true and prevail in trial, the likely outcome would be no recovery for the
26 Class Members on the meal break claim.

27 29. Plaintiff also contends that Defendants did not provide Class Members with paid 10-
28 minute rest breaks for every hours or major fraction thereof. Plaintiff contends that Class Members

1 consistently worked in excess of consecutive three and a half-hour shifts and were entitled to paid
2 rest breaks of not less than ten minutes for each consecutive three and a half-hour shift but were
3 required to work through their rest breaks during their shifts. Plaintiff also alleged that Plaintiff and
4 Class Members would have to abruptly stop their rest breaks to tend to clients.

5 30. Defendant maintains that it did provide a reasonable opportunity for Class Members
6 to take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not
7 provided. As with the meal break violation claim, Defendant contends that Class Members were
8 given a reasonable opportunity to take their rest periods, and for the majority of Plaintiff and Class
9 Members' employment, they worked remotely and so had discretion to take rest breaks. Considering
10 that unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult
11 to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel
12 applied significant and appropriate discounts to the rest break claim.

13 31. Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members
14 to use their cellular phones for work, for which they were not reimbursed. Defendant maintained
15 that Plaintiff and Class Members were not required to use their personal cell phones to perform their
16 job duties and that individualized issues relating to this claim would preclude class certification.

17 32. As for the wage statement and waiting time penalties claims, Defendant contends
18 that these claims are merely derivative of the underlying claims and that Plaintiff and Class Members
19 would be unable to first establish liability for the underlying claims for the reasons described above.
20 Defendant further contends that even if they could first establish liability for the underlying claims,
21 Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and
22 knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate
23 wage statements and pay all wages due to Plaintiff and Class Members. Thus, Defendant contends
24 that the wage statement and waiting time penalties claims to have little to no value.

25 33. Similarly, Defendant contends that the PAGA claim is also derivative of the
26 underlying claims in the Action and ultimately fails because the underlying claims have no merit.
27 Defendant also contends that even if Plaintiff and Class Members could establish Labor Code
28 violations, the Court has the discretion to award less than the maximum civil penalty amount and

1 would award substantially less civil penalties here because Defendant acted in good faith to comply
2 with the relevant wage and hour laws and any violations were minor and technical in nature.

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

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

16 **D. The Risk of Maintaining Class Action Status Through Trial.**

17 36. Plaintiff had not yet filed her motion for class certification, and as such, the extent to
18 which Plaintiff proposed classes were certifiable is somewhat speculative. Absent a settlement, there
19 was a risk that there would not be a certified class at the time of trial, or if there were, it could consist
20 of a significantly smaller group of employees than the proposed Settlement Class, resulting in less
21 overall recovery.

22 37. Finally, in class actions, decertification is always a possibility, and there is always a
23 risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat.*
24 *Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions
25 and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial
26 would have also required expert witnesses, the accrual of extensive litigation costs, and the
27 commitment of extensive further time and financial resources. Finally, given the complexity and
28 unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy

1 and costly appeal. An appeal would result in further delay for the Class Members who have already
2 waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any
3 litigation, and this Settlement was the product of compromise accounting for those risks and that
4 uncertainty.

5 **E. The Presence of a Governmental Participant.**

6 38. Class Counsel will be submitting the Settlement Agreement and this Motion to the
7 LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(1)(2).

8 **F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.**

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

14 40. The strength of the Plaintiff's case in light of the settlement amount is deemed by
15 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
16 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay minimum
17 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage
18 statements, failed to pay all wages upon termination, and failed to reimburse for business expenses,
19 all in violation of California law. Plaintiff seeks related violations of California's Business &
20 Professions Code, penalties pursuant to Labor Code § 2699 *et seq.* Summary calculations for
21 estimated liability for each of these claims follow.

22 Failure to Pay Minimum and Overtime Wages:

23 41. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
24 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
25 eight hours in a day and 40 hours in a week. Specifically, Plaintiff alleges that Defendant required
26 Plaintiff and Class Members to manually input time entries into their electronic timekeeping system
27 that comported with their scheduled shifts but did not reflect their actual hours worked, as well as
28 perform pre-shift and post-shift off the clock work for which they were not paid. For instance,

1 Plaintiff alleges that Class Members were required to arrive to work several minutes prior to the
2 start of their scheduled shifts to open the office, stay late to clean and lock up and attend meetings,
3 and work through lunch and rest periods.

4 42. Plaintiff also alleges that Defendant failed to compensate Plaintiff and other Class
5 Members for other off the clock work including for work performed at home after the scheduled
6 shift ended, and for meetings held 4-5 times per month that often ran 15 to 30 minutes past the time
7 Plaintiff and Class Members' shifts ended. Moreover, Plaintiff alleged that Plaintiff and other Class
8 Members were only allowed to record a certain amount of hours per task, thereby resulting in more
9 off the clock work when the actual amount of time each task would take to complete was longer
10 than the time Defendant permitted Plaintiff and other Class Members to record. Plaintiff alleged
11 that Defendant had a consistent policy and practice of unlawfully rounding hours worked to the
12 detriment of the Class Members because Defendant regularly required Plaintiff and Class Members
13 to work off the clock to complete special projects with a limit on the hours that could be recorded
14 as worked. All of this work resulted in daily unpaid overtime.

15 43. Defendant contends that it did not require off the clock work, paid for all reported
16 hours worked, that Class Members were instructed and required to record all hours worked, that any
17 alleged off the clock work was performed without Defendant's knowledge, that for the majority of
18 Plaintiff's employment, Plaintiff and other Class Members worked remotely so they had discretion
19 to take meal and rest breaks which Defendant did not impede, and that it paid wages at the proper
20 rates. Defendant also argues that given its written policies and practices, any unrecorded hours are
21 likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying
22 this claim, Class Counsel applied a significant discount to damages based on this theory.

23 44. Class Counsel estimated Defendant's exposure on the unpaid wages claims to be
24 approximately \$629,781.50 (assuming 5 minutes of off the clock work per shift and 61.3% of off
25 the clock hours attributable to overtime). However, given Defendants' defenses and the potential
26 hurdles facing certification of off-the-clock claims, Class Counsel applied a 50% discount making
27 for an adjusted realistic exposure of **\$314,890.75** for Defendant.

28 //

Meal Periods and Rest Breaks:

45. Plaintiff argued that Defendant had a common practice and policy of denying compliant meal periods. For example, Plaintiff alleges that Defendant's policy required Class Members to clock out for their scheduled meal periods but continue working, especially when Defendant required at least one employee to remain at the office at all times to attend to incoming clients, and Class Members were not paid for this time that they remained under Defendant's control and were not provided with the opportunity to take timely and complete meal periods. This resulted in Plaintiff and Class Members working during their meal periods or missing their meal periods entirely. Moreover, Plaintiff alleges that Defendant failed to provide a second meal period to Plaintiff and Class Members when they worked over 10 hours in a day.

46. For each meal period missed, of less than 30 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a complete and timely meal period, an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay." To comply with these laws, every employer must keep, for each employee, accurate time records showing when the employee begins and ends each work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3). Plaintiff alleges that Defendants failed to pay the legally required premium at their regular rate of pay whenever meal periods were missed, interrupted, or late.

47. Defendant contends that Class Members were given a reasonable opportunity to take their meal periods, and for the majority of Plaintiff and Class Members' employment, they worked remotely and so had discretion to take meal breaks. Defendant further contends that the meal break claim requires individualized inquiries which would preclude class certification. If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

48. Class Counsel estimated Defendant's maximum exposure on the meal period claim at approximately \$885,698.00 (meal period premiums due with an offset for meal period premiums paid). However, given Defendants' defenses and the potential hurdles facing certification of the

1 meal break claim, Class Counsel applied an 80% discount making for an adjusted realistic exposure
2 of **\$177,139.60** for Defendant.

3 49. Rest Breaks: Plaintiff contended that Defendant did not provide Class Members with
4 timely paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiff contends
5 that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled
6 to paid rest breaks of not less than ten minutes for each consecutive four-hour shift but were required
7 to work through their rest breaks during their shifts when they were interrupted or missed due to the
8 requirement of tending to clients when they unexpectedly came in for assistance.

9 50. Defendant maintains that it did provide a reasonable opportunity for Class Members to
10 take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not
11 provided. Considering that unlike meal periods, rest breaks need not be recorded, these violations
12 would likely be difficult to prove at trial and potentially depress the damages ultimately awarded.

13 51. Class Counsel estimated Defendant's maximum liability exposure on the rest break
14 period claim at approximately \$1,060,392.60 assuming a 20% violation rate. However, given
15 Defendant's contentions and the difficulties facing certification of rest break claims, Class Counsel
16 applied an 80% discount making for an adjusted realistic exposure of **\$212,078.52** for Defendant.
17 Owing to the arguments above and the fact that the recording of rest periods is not required, this
18 claim was substantially discounted.

19 Inaccurate Wage Statement Violations:

20 52. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial
21 violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of
22 \$4,000 per employee. Plaintiff alleged Defendant issued wage statements to Plaintiff and the Class
23 Members that did not accurately list all hours worked by omitting off-the-clock work and
24 inaccurately listing applicable hourly rates.

25 53. Defendant challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by
26 arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to
27 prove the underlying claims could result in the dismissal of these derivative claims. Defendant also
28 argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.,* Labor

Code § 226(e) (recovery of penalties requires showing there was “a knowing and intentional failure by an employer”).

54. Class Counsel estimated Defendant’s maximum total exposure on the section 226 claim at approximately \$960,600.00 (assuming \$50/\$100 for initial and subsequent violations and 346 employees during the relevant period and a maximum of \$4,000.00 per employee). After considering Defendants’ contentions and the potential class certification issues, Class Counsel discounted this amount by 90% to get an adjusted realistic exposure of **\$96,060.00**.

Failure to Pay Final Wages at Termination or Separation:

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

56. Section 203 further provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee’s wages will continue as a penalty until paid for a period of up to 30 days from the date they were due. Because Class Members stopped working for Defendant but were allegedly not paid their full compensation for the reasons discussed above, Class Members did not receive all wages due upon termination of employment.

57. Defendant challenged this claim under Labor Code § 203 with several arguments, including that this claim is merely derivative of the other claims that lacked merit and that under Labor Code § 203, employers are only obligated to pay waiting-time penalties if they “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title 8, California Code of Regulations, § 13520 states: “A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.” Defendant argued that their good faith disputes and lack of willfulness would excuse its violations. Defendant maintained that because they had viable

1 defenses in both law and fact, such penalties were subject to a three-year limitations period under
2 Labor Code § 203(b).

3 58. Class Counsel estimated Defendant's maximum total exposure on the section 203 claim
4 at approximately \$1,073,078 (201 terminated employees during the relevant period x 30 days x
5 average hourly rate per year x 6.8 hours per work day). Given the foregoing arguments, Class
6 Counsel discounted this amount by 90% to get an adjusted realistic exposure of **\$107,307.80**.

7 Failure to Reimburse for Necessary Business Expenditures:

8 59. Under Labor Code § 22802(a) Defendant must indemnify Plaintiff and Class Members
9 for all necessary expenditures or losses incurred in direct consequence of the discharge of their
10 duties. As discussed above, Plaintiff alleges that Plaintiff and Class Members incurred necessary
11 expenditures in the performance of their job duties for Defendant, including the cost of personal
12 cell phone usage for work related purposes, but were not reimbursed for those expenses by
13 Defendant. Defendant contends that they had an expense reimbursement policy and did reimburse
14 Plaintiff and Class Members for any business expenses incurred pursuant to their policy.

15 60. Plaintiff estimated Defendant's total exposure on the unreimbursed business expenses
16 claim at approximately \$338,175.00 (assuming \$25/month x 265 Class Members). However, given
17 Defendant's reimbursement policy and the potential for the need for individualized inquiries
18 making class certification of this claim difficult, Class Counsel applied an 80% discount to get an
19 adjusted realistic exposure of **\$67,635.00**.

20 PAGA Penalties:

21 61. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows
22 Plaintiff to obtain civil penalties on behalf of herself and other aggrieved employees for Defendant's
23 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
24 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
25 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
27 employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-
28 five percent (75%) of the penalties recovered must be allocated to the Labor and Workforce

1 Development Agency (LWDA), with the remaining twenty-five percent (25%) allocated to the
2 affected employees. The limitations period for all penalties is one year prior to the filing of the
3 complaint.

4 62. The provisions of the Labor Code potentially triggering PAGA penalties in this case
5 include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA
6 penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that “a court
7 may award a lesser amount than the maximum civil penalty amount specified by this part if, based
8 on the facts and circumstances of the particular case, to do otherwise would result in an award that
9 is unjust, arbitrary and oppressive, or confiscatory.” *See Thurman v. Bayshore* (2012) 203 Cal. App.
10 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant contested
11 Plaintiffs’ claim for PAGA penalties.

12 63. PAGA penalties are also derivative of each and every other claim, and Defendant argued
13 the PAGA claims would be subject to the same defenses as the underlying claims, and as well as
14 additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas*
15 *Corp.* (2008) 163 Cal.App.4th 1157, Defendant asserted that penalties under PAGA could, at best,
16 be awarded only at the rates obtainable for initial violations under the applicable statutes, because
17 Defendant had never been notified of the alleged violations. *Id.* at 1208-1209.

18 64. Plaintiff estimated Defendant’s total exposure on the PAGA claim at approximately
19 \$1,200,000.00 (12,000 PAGA Pay Periods x \$100). However, Class Counsel also estimated any
20 PAGA recovery would be substantially reduced and applied discounts in light of the countervailing
21 arguments with regard to the other causes of action and the Court’s power to award “a lesser amount
22 than the maximum civil liability.” A more realistic exposure would be around \$5 per violation, and
23 therefore \$60,000.00 is a more realistic exposure. The PAGA allocation agreed upon by the Parties
24 therefore was \$50,000.00, subject to the Court’s final approval. 75% of that amount (\$37,500.00)
25 will be paid to the LWDA out of the Gross Settlement Amount, and the remaining 25% (\$12,500.00)
26 will remain in the PAGA Settlement Fund for distribution to the Aggrieved Employees.

27 Unfair Business Practices
28

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

Summary

66. The foregoing discussion establishes the adequacy of the Settlement amount in light of the merits of Plaintiff's case and establishes the fairness of the class-action settlement in the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating to Defendant's legal and factual arguments that worked to detract from the strength of Plaintiff's case.

67. Class Counsel applied reasonable and justified discounts, considering the facts and legal contexts outlined above. These substantial discounts were necessary in light of Defendant's contentions and denial of liability. This Settlement, like most others, was the product of compromise. As addressed above, Plaintiff estimated that Defendant faced approximately **\$1,035,111.67** in total realistic exposure on Plaintiff's main claims. The Gross Settlement Amount of \$375,000.00 therefore represents a recovery for the Class Members of approximately 55.5% of the total realistic exposure Plaintiff estimated Defendant could face on these class-wide claims. Class Counsel submits that this is an optimal result for the Class in light of all of the factors described above.

Class Counsel Fees Payment is Fair and Reasonable

68. Under the Settlement, Class Counsel requests, without opposition from Defendant, an award of 35% of the GSA currently estimated to be \$201,250,000.00 for attorneys' fees and up to \$35,000.00 for reasonable expenses incurred to prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place as they will not receive any compensation for their efforts until recovery is obtained for the Class. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and

1 for all the work they will continue to do in carrying out and overseeing the notification to Class
2 Members, communicating with Class Members regarding their claims, and assisting in the
3 administration of the Settlement if it is preliminarily approved. The requested fee is reasonable for
4 the services provided to Class Members and for the benefits they are to receive.

5
6
7 **Class Representative Enhancement Award is Fair and Reasonable**

8 69. Plaintiff is entitled to a reasonable service payment for her efforts and initiative in
9 bringing and helping to prosecute this action. Plaintiff spent significant time better apprising herself
10 of her rights, deciding whether remedial action should be taken and how it should be taken, searching
11 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the
12 case and the law.

13 70. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on
14 to discuss every aspect of her case. Plaintiff provided Class Counsel with information about
15 Defendant and about the industry generally, produced and reviewed documents, identified
16 witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation
17 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the
18 Settlement Agreement.

19 71. In light of the foregoing, Class Counsel believes that the \$10,000.00 incentive award to
20 the Class Representative is fair and reasonable.

21 **Proposed Class Notice Provides Adequate Notice**

22 72. The notification procedure set out in the Settlement Agreement provides the greatest
23 likelihood that each and every Class Member will receive the Class Notice, attached to the
24 Settlement as Exhibit A. Under the Settlement, Defendant will deliver the Class Information to the
25 Settlement Administrator in the form of a Microsoft Excel spreadsheet not later than fourteen (14)
26 calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver
27 the Class Information to the Settlement Administrator in the form of a Microsoft Excel spreadsheet.
28 The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as

1 Exhibit A, to all Class Members in no event later than fourteen (14) days following the Preliminary
2 Approval Date via first class United States Postal Service (“USPS”) mail. (Exhibit 1, Settlement
3 Agreement, ¶¶ 7.4.2, 7.4.4). The Class Notice includes a summary of the case and settlement terms
4 and provides Class Members with detailed instructions on how to exclude themselves, object to the
5 settlement, and dispute the number of workweeks and/or pay periods attributed to each Class
6 Member per Defendant’s records. (Exhibit A, Class Notice). Class Members will have forty-five
7 (45) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days if
8 they receive a re-mailed Notice) to opt out of or object to the Settlement or to dispute the number of
9 work weeks and/or pay periods. (Exhibit 1, Settlement Agreement, ¶ 7.4.4). This is the best and
10 most practicable way to ensure the greatest possible number of Class Members will receive the
11 Notice.

12 73. The settlement agreement does not impose any affirmative duties on Participating Class
13 Members. No claim form is required to participate in the Settlement. Individuals who wish to opt
14 out or object may do so. The Class Notice itself fully apprises Class Members of the nature of the
15 lawsuit, the claims involved, the terms of the settlement, and their options thereunder. (Exhibit 1,
16 Settlement Agreement, Exhibit A, Class Notice). It provides for a specific procedure to seek
17 exclusion from the Class, disputing payments and Class Information, challenging workweek and
18 pay period data, and lodging objections to the settlement. (Exhibit 1, Settlement Agreement, ¶ 7.5)-
19 7.7). In the Class Notice, Class Members will also receive Class Counsel’s contact information so
20 they can speak to attorneys conversant with the legal and factual issues involved in this case, as well
21 as the contact information for the Settlement Administrator. The efforts taken to ensure that Class
22 Members receive the Class Notice and are well informed about the settlement are reasonable and
23 provide the best notice practicable under the facts.

24 **Qualifications and Adequacy of Class Counsel**

25 74. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases,
26 including class actions and PAGA actions on behalf of employees and others who have had their
27 rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs’
28

counsel of record in numerous wage and hour and employment class action and PAGA action cases pending in both state and federal court.

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

76. D.Law has litigated and successfully resolved many wage and hour class action cases involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v. Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara, 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont

1 Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT
2 Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa
3 MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court
4 of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California,
5 Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church &
6 Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL
7 Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo
8 Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account
9 Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369),
10 Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421),
11 Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v.
12 Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha
13 Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-
14 CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of
15 California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court
16 of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern
17 District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al.
18 (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc.
19 (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc.
20 (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat
21 International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care
22 Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v.
23 OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743),
24 Viridi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS
25 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-
26 CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San
27 Diego, 37-2020-00008179-CU-OE-NC), among others.

28 77. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement

1 department. I was admitted to the California Bar in December 2008. I received my J.D. from
2 Pepperdine University School of Law and B.S. from the University of Southern California. Since
3 graduating from law school, I have dedicated virtually my entire career on the practice of
4 employment law. I have practiced employment law from the plaintiff's side, from the defense side,
5 and from an in-house position. I have significant experience specifically working on wage and hour
6 class actions from the plaintiff's side as well as the defense side, with the majority of my experience
7 coming from the plaintiff's side.

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

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

1 are well-qualified to act as class counsel and represent the Plaintiff and the putative Class Members
2 and aggrieved employees in this action.

3 80. We understand the responsibilities owed as counsel to the Settlement Class Members and
4 aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims
5 asserted in this action and have remained committed to dedicating the resources necessary to
6 represent the Settlement Class and vigorously pursue their claims. Based upon my experience and
7 understanding of the claims and defenses in this action, I believe the settlement is fair, adequate,
8 and reasonable for the Class Members and aggrieved employees and all involved, and that the
9 Settlement is well within the range of reasonableness that would permit it to be finally approved. I
10 am not aware of any conflict of interest with Plaintiff or any other Class Member that would interfere
11 with the duties as Class Counsel.

12 81. On May 22, 2025, Plaintiff submitted the Class and PAGA Action Settlement Agreement
13 and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and
14 supporting documents to the LWDA. A true and correct copy of the confirmatory email from the
15 LWDA is attached hereto as **Exhibit 3.**

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

18 Executed this 22nd day of May 2025, in Glendale, California

19 
20 _____
Enoch J. Kim

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Angelina Fagundo (“Plaintiff”) and Defendant North Coast Opportunities, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1 “Action” means Plaintiff’s wage and hour lawsuit filed against Defendant captioned *Angelina Fagundo v. North Coast Opportunities, Inc.*, Case No. 23CV00840, initiated on September 6, 2023, and pending in Superior Court of the State of California, County of Mendocino.
- 1.2 “Administrator” means Phoenix Settlement Administrators (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all non-exempt, hourly individuals of Defendant, who did not sign an arbitration agreement with Defendant, in California during the PAGA Period.
- 1.5 “Class” means all non-exempt, hourly individuals of Defendant, who did not sign an arbitration agreement with Defendant, in California during the Class Period.
- 1.6 “Class Counsel” means Emil Davtyan, David Yeremian, Alvin B. Lindsay, Rose Sorial, Enoch Kim, and Antonia McKee of D.Law, Inc.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, last known telephone number, Social Security number, start and end dates of active employment as a non-exempt employee in the Class in the State of California, and any other information reasonably required by the Settlement Administrator to effectuate the terms of the Settlement.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Employee).

- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from September 6, 2019, through April 7, 2025.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Enhancement Award” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Mendocino.
- 1.16 “Defendant” means named Defendant North Coast Opportunities, Inc., as named by Plaintiff in the operative complaint, and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.
- 1.17 “Defense Counsel” means Marcus Dong of Kaufman Dolowich, LLP.
- 1.18 “Effective Date” means the date on which the latest of the following have occurred: (a) if no Participating Class Member objects to the Settlement or if all objections are withdrawn, the date upon which the Court grants Final Approval of the Settlement; (b) if one or more Participating Class Member objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the date of the resolution or withdrawal of the last such appeal in a way that does not alter the terms of the Settlement.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.22 “Gross Settlement Amount” or “GSA” means Five Hundred Seventy-Five Thousand Dollars and Zero Cents (\$575,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3 below. The Gross Settlement Amount will be used to pay (1) Individual Class Payments, (2) Class Counsel Fees, (3) Class Counsel Litigation Expenses, (4) Settlement Administration Expenses, (5) Plaintiff’s Class Representative Enhancement Award, (6) Individual PAGA Payments, (7) the PAGA Penalties Payment to the LWDA, and (8) all Employee-side taxes arising from the payments made under this Settlement.
- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Plaintiff’s Enhancement Award, Class Counsel’s Fees, Class Counsel’s Costs, the PAGA Penalties Payment, and the Settlement Administrator’s Costs. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any pay period during which an Employee worked for Defendant for at least one (1) day during the PAGA Period.
- 1.31 “PAGA Period” means the period from September 5, 2022 to April 7, 2025.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33 “PAGA Notice” means Plaintiff’s September 5, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). (LWDA-CM-979783-23).

- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Employees (\$12,500.00) and the 75% to LWDA (\$37,500.00) in settlement of PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Angelina Fagundo, the named plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of Class and PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.42 “Response Deadline” means sixty (60) days after the Administrator mails Notice to Class Members and 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 their 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.
- 1.43 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.44 “Workweek” means any calendar week (i.e., a week beginning with Sunday and ending with Saturday), in which a Class Member or Aggrieved Employee worked for Defendant for at least one (1) day, during the Class Period.

2. **RECITALS.**

- 2.1 On September 6, 2023, Plaintiff filed a lawsuit entitled *Angelina Fagundo v. North Coast Opportunities, Inc.*, Superior Court of California for the County of Mendocino, Case No. 23CV00840, alleging causes of action against Defendants for failing to pay minimum wages, failing to pay wages and overtime wages under Labor Code § 510, meal period liability under Labor Code § 226.7, rest period liability under Labor Code § 226.7,

violation of Labor Code § 226, violation of Labor Code § 221, violation of Labor Code § 204, violation of Labor Code § 203, failure to reimburse necessary business expenses § 2802, failure to maintain records required under Labor Code §§ 1174 and 1174.5, and violation of Business & Professions Code § 17200 *et seq.* (“Class Action”). On November 13, 2023, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under PAGA, Labor Code § 2698 (the “Operative Complaint”).

2.2 Defendant denies the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice on September 5, 2023 (LWDA-CM-CM-979783-23).

2.4 On February 6, 2025, the Parties participated in an all-day mediation with Todd Smith, Esq., which led to this Agreement to settle the Action.

2.5 Prior to mediation, Plaintiff obtained, through informal discovery, pertinent payroll, timekeeping, and other data, including a randomized sampling of payroll and timekeeping data. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“Dunk/Kullar”).

2.6 The Court has not granted class certification.

2.7 The Parties 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 promise to pay \$575,000.00 as the Gross Settlement Amount and in addition, pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments for their respective employees, including the employer FICA, FUTA, and SDI contributions. The GSA is inclusive of payments to Class Members who do not opt out of the settlement, Plaintiff’s Enhancement Award, Class Counsel’s Fees and Costs, Settlement Administrator’s Costs, and the PAGA Penalties settlement amount. The Administrator will disburse the 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 Plaintiff: Class Representative Enhancement Award to Plaintiff of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Enhancement Award that does not exceed this amount. As part of the motion for Class Counsel Fees and Class Litigation Costs, Plaintiff will seek Court approval for any Class Representative Enhancement Award no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Enhancement Award.
- 3.2.2 To Class Counsel: A Class Counsel Fees of not more than 35% of the Gross Settlement Amount, which is currently estimated to be \$201,250.00 and a Class Counsel Litigation Costs of not more than \$35,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees and Class Litigation Costs no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves Class Counsel Fees and/or a Class Counsel Costs less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Defendant shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any awarded Class Counsel Fees and/or Class Counsel Litigation Costs. The Administrator will pay the Class Counsel Fees and Class Counsel Costs awarded using one or more IRS 1099 Forms. Class Counsel shall assume full responsibility and liability for taxes owed on the Class Counsel Fees and the Class Counsel Litigation Costs and hold Defendant harmless from any dispute or controversy regarding any division or sharing of any of these payments.
- 3.2.3 To the Administrator: Settlement Administration Costs not to exceed Nine Thousand Dollars and Zero Cents (\$9,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Costs is less or the Court approves payment less than \$9,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1 Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are

subject to tax withholding and will be reported on an IRS W-2 Form by the Administrator. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and business expenses, and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms by the Administrator. 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 Fifty Thousand Dollars and Zero Cents (\$50,000.00) to be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA Payment and 25% (\$12,500.00) 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 (\$12,500.00) by the total number of Pay Periods (full or partial) worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employees' number of 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.

3.2.6 In the event that the Court reduces or does not approve the requested Class Counsel Fees and/or Class Litigation Costs, Class Counsel reserve their right to appeal such order; however, Plaintiff and/or Class Counsel shall not request or demand an increase to the Gross Settlement Amount on that basis.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

4.1 Class Workweeks and PAGA Pay Periods. Based on a review of its records to date, at the time of mediation on February 6, 2025, Defendant estimates there are 265 Class Members who collectively worked a total of 23,000 Workweeks during the Class Period, and 346 Aggrieved Employees who worked a total 12,000 Pay Periods during the PAGA Period.

4.2 Class Data or Class List. Not later than thirty (30) days after the date on which the Court enters an order granting preliminary approval of the Settlement, Defendant shall provide the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet, containing the following information for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment, as a non-exempt employee of Defendant in the State of California; and (6) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. 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, restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement, and not provide the Class Data to Plaintiff or Class Counsel. Defendant has a continuing duty to promptly notify Class Counsel if it is discovered that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator as follows: \$375,000.00 within 30 days of the Court granting final approval of the settlement; and the remaining \$200,000.00 balance to be paid no later than 90 days after the initial \$375,000 payment.

4.4 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant fully funds 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, the Class Counsel Fees, the Class Counsel Litigation Costs, and the Class Representative Enhancement Award.

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement

Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
 - 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
 - 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
5. **RELEASES OF CLAIMS.** Effective upon remittance of the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by Defendant to the Settlement Administrator, Plaintiff, Participating Class Members, and Aggrieved Employees shall fully and finally release and discharge claims against Defendant as follows:
- 5.1 **Plaintiff's Release.** Plaintiff and her respective former and present spouses, representatives, agents, heirs, administrators, successors, and assigns generally, release, and discharge Defendant from all claims that were, or reasonably could have been, alleged based on the facts contained in the Operative Complaint and Plaintiff's PAGA Notice, including the claims listed in Paragraphs 5.2 and 5.3 below, and any and all existing or potential claims of any kind whatsoever, including all claims relating to her employment against Defendant, which Plaintiff now has, owns or holds, or claims to have, own or hold, against Defendant up to and including, the date of Plaintiff's execution of this Agreement (with all of the foregoing included in the definition of the Action) ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that

Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 Release by Participating Class Members: Participating Class Members release and discharge Defendant from all claims, rights, demands, liabilities, and causes of action that are alleged, or reasonably could have been alleged, based on the facts and claims asserted in the Operative Complaint, including without limitation the following claims based on any theory of recovery for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512 (Unpaid Meal Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code § 226 (Failure to Provide Accurate Wage Statements); (5) Violation of Labor Code § 221 (Wage Garnishment); (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8) Violation of Labor Code § 2802 (Failure to Reimburse Necessary Business Expenses); (9) Violation of Labor Code §§ 1174, 1174.5 (Failure to Maintain Records Required); and (10) claims for violation of California Business and Professions Code §§ 17200, et seq.

5.3 Release by Aggrieved Employees: Aggrieved Employees and the California Labor and Workforce Development Agency are deemed to fully and finally release and discharge Defendant from all claims for the recovery of civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have, against Defendant, arising out of the violations alleged in the Operative Complaint or the PAGA Notice occurring during the PAGA Period, including failure to pay minimum wages and overtime, failure to provide compliant meal and rest period premiums, failure to pay all wages owed at discharge or resignation, failure to timely pay wages during employment, failure to provide complete and accurate wage statements, wage garnishment, failure to keep complete and accurate payroll records, failure to reimburse necessary business-related expenses, and violations of Labor Code sections, 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698, et. seq., 2800, and 2802.

6. **MOTION FOR PRELIMINARY APPROVAL.** Plaintiff will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the Class and PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of Class and PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel, Defendants, or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaints (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Plaintiff, by and through Class Counsel, is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Defendant will not oppose Plaintiff's Motion for Preliminary Approval. Plaintiff is also responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of

Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4 Notice to Class Members.

7.4.1 Not 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 fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable 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/Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator by mail, fax, or email, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement (if applicable), regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon

entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks and or Pay Periods. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks (if any) allocated to the Class Member and or Pay Periods allocated to the Aggrieved Employee in the Class Notice. The Class Member/Aggrieved Employee may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member/Aggrieved Employee to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks or Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination on the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members will need to mail any written objections to the Administrator only. Participating Class Members will not be barred from appearing at the Final Approval Hearing if they have not complied with the objection procedures for mailing objections to the Settlement Administrator. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to mail a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class

Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees, Class Counsel Litigation Costs, and Class Representative Enhancement Award, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes, and emails.

- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than seven (7) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

- 7.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on a review of its records to date, at the time of mediation on February 6, 2025, Defendant estimates there are 265 Class Members who collectively worked a total of 23,000 Workweeks during the Class Period, and 346 Aggrieved Employees who worked a total 12,000 Pay Periods during the PAGA Period. If the number of Workweeks increases by more than 10% in the Class Period (i.e., the number of Workweeks exceeds 25,530), Defendant have the option to either: (1) increase the Gross Settlement Amount proportionally by the number of Workweeks worked in excess of 10% (i.e., if the total Workweeks increase by 11% in the Class Period, the Gross Settlement Amount would increase by 1%), or (2) elect to end the Class Period on the date the number of Workweeks is equal to or less than 25,300, in lieu of paying an increase to the Gross Settlement Amount. If this provision is triggered, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains 35% of the GSA after the upward adjustment required by this provision is implemented.
9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, in its discretion, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that no Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than fourteen (14) days prior to filing the Motion for Final Approval. The Parties, by and through their respective 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. The Parties agree to cooperate to promote participation in the Settlement and in seeking court approval of the Settlement, including working cooperatively to address any questions raised by the Court and making any reasonable amendments required by the Court by, and among other things, modifying the Settlement Agreement, submitting supplemental evidence or declarations reasonably required, and supplementing points and authorities as requested by the Court.
- 10.2.1 The Parties agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain settlement agreements from the Class Members during the Settlement approval process and will work in good faith to reach an agreement approved by the Court.
- 10.2.2 Defendant further agrees that they will not oppose Plaintiff's Motion for Preliminary Approval or Motion for Final Approval.
- 10.2.3 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 Enhancement Award, and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.2.4 In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of mediator Todd Smith, Esq. and/or the Court for resolution.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees and Class Counsel Litigation Costs set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an

objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

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

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

12. **ADDITIONAL PROVISIONS.**

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

12.2 Confidentiality.

12.2.1 The Parties agree that, until the Motion for Preliminary Approval of Settlement is filed, they and their respective Counsel will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be

instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. The Parties agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

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

12.3 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all prior written agreements, including the Memorandum of Understanding of Settlement, and any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.4 Attorney Authorization. The Parties separately warrant and represent that Class Counsel and Defense Counsel are authorized, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

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

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

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

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

- 12.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.11 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of confidential class data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of all documents designated confidential received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of any class data or other confidential information.
- 12.12 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.13 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.
- 12.14 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

D.Law, Inc.

Emil Davtyan

emil@d.law

David Yeremian

d.yeremian@d.law

Alvin B. Lindsay

a.lindsay@d.law

Enoch Kim

e.kim@d.law

Antonia McKee

a.bliznets@d.law

450 N. Brand Blvd., Suite 840

Glendale, CA 91203

Telephone: (818) 962-6465

To Defendant:

KAUFMAN DOLOWICH, LLP

Marcus Dong

mdong@kaufmandolowich.com

425 California Street, Suite 2100

San Francisco, California 94104

Telephone: (415) 926-7600

- 12.15 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.16 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 12.17 Bankruptcy. In the event that any Defendant files for bankruptcy prior to the final disbursement of the Gross Settlement Amount, Plaintiff shall be permitted to file the claims asserted in the Action in the bankruptcy proceedings. If any settlement funds have been disbursed as provided in this Agreement as of the date Defendant files for bankruptcy, Defendant shall not be entitled to a return of such funds from the recipients. However, Defendant will be entitled to claim a credit for any previously disbursed funds in the bankruptcy proceedings.
- 12.18 Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs, including expert witness fees in connection with any enforcement actions.

APPROVED:

Dated: April ²³____, 2025

Signed by:

6BC07F7605C649B...

Angelina Fagundo

Dated: April _____, 2025

North Coast Opportunities, Inc.

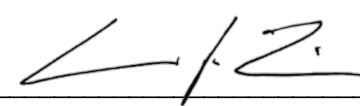
By: Dan McIntire

Its: CEO

AGREED AS TO FORM:

Dated: April 28____, 2025

D.LAW, INC.



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Enoch Kim
Antonia McKee
Attorneys for Plaintiff Angelina Fagundo

Dated: April _____, 2025

KAUFMAN DOLOWICH, LLP.

Marcus Dong
Attorneys for Defendant North Coast Opportunities, Inc.

APPROVED:

Dated: April _____, 2025

Angelina Fagundo

Dated: April 22, 2025



North Coast Opportunities, Inc.
By: Dan McIntire
Its: CEO

AGREED AS TO FORM:

Dated: April _____, 2025

D.LAW, INC.

Emil Davtyan
David Yeremian
Alvin B. Lindsay
Enoch Kim
Antonia McKee
Attorneys for Plaintiff Angelina Fagundo

Dated: April 22, 2025

KAUFMAN DOLOWICH, LLP.



Marcus Dong
Attorneys for Defendant North Coast Opportunities, Inc.

AMENDMENT TO CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Amendment to Class Action and PAGA Settlement Agreement (the “Amendment”) is made by and between Plaintiff Angelina Fagundo (“Plaintiff”) and Defendant North Coast Opportunities, Inc. (“Defendant”), by and through their respective undersigned duly authorized representatives. This Amendment amends the Class Action and PAGA Settlement Agreement (the “Settlement Agreement”) fully executed by Plaintiff and Defendant on April 28, 2025, in accordance with Section 12.4 of the Settlement Agreement.

RECITALS

- A. Pursuant to Section 12.4 of the Settlement Agreement, the Settlement Agreement may be amended and modified by Class Counsel and Defense Counsel, as authorized representatives of each of the Parties, to effectuate the terms of the Settlement Agreement.
- B. The Parties wish to amend the Settlement Agreement solely in connection with Sections 1.4 and 1.5 of the Settlement Agreement with respect to the defined term “**Class**” and “**Aggrieved Employee**” under the Settlement Agreement, as set forth herein.

The Parties hereby agree as follows:

I. AMENDMENT

A. The defined term “Aggrieved Employee” contained in Section 1.4 of the Settlement Agreement is hereby deleted and replaced with the following: “Aggrieved Employee” means all non-exempt, hourly individuals employed by Defendant in California during the PAGA Period.

B. The defined term “Class” contained in Section 1.5 of the Settlement Agreement is hereby deleted and replaced with the following: “Class” means all non-exempt, hourly individuals employed by Defendant, who did not sign an arbitration agreement with Defendant, in California during the Class Period.

II. EFFECT OF AMENDMENT

Except as and to the extent expressly modified by this Amendment, the Settlement Agreement, as so amended by this Amendment, will remain in full force and effect in all respects. Each reference to the “Settlement Agreement” in the Settlement Agreement will refer to the Settlement Agreement as amended by this Amendment.

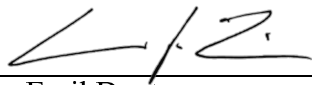
III. EXECUTION IN COUNTERPARTS.

This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Delivery of an executed signature page of this Amendment by facsimile or other electronic means shall be as effective as delivery of a manually executed signature page of this Settlement Agreement.

SIGNATURES

D.LAW, INC., as duly authorized representative of Plaintiff Angelina Fagundo

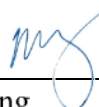
Dated: 5/22/2025



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Enoch J. Kim
Antonia McKee
Attorneys for Plaintiff Angelina Fagundo

KAUFMAN DOLOWICH, as duly authorized representative of Defendant North Coast Opportunities, Inc.

Dated: May 21, 2025



Marcus Dong
Attorneys for Defendant
North Coast Opportunities, Inc.

EXHIBIT A

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

Angelina Fagundo v. North Coast Opportunities, Inc.

Superior Court of California for the County of Mendocino, Case No. 23CV00840

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or a solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against North Coast Opportunities, Inc. ("Defendant") for alleged wage and hour violations. The Action was filed by a former employee, Angelina Fagundo ("Plaintiff"), and seeks payment of unpaid wages and other relief for a class of all non-exempt, hourly individuals employed by Defendant, who did not sign an arbitration agreement with Defendant, in California during the Class Period (September 6, 2019, to April 7, 2025) (hereinafter, the "Class"). The Action also seeks penalties under the California Private Attorney General Act ("PAGA") for all non-exempt, hourly individuals employed by Defendant in California during the PAGA Period (September 5, 2022, to April 7, 2025) ("Aggrieved Employees").

Defendant denies violating any laws or failing to pay any wages and contends it complied with all applicable laws. However, Defendant has agreed to a proposed settlement as a compromise of the disputed claims without admitting any liability or wrongdoing. The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

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

The above estimates are based on Defendant's applicable records showing that **you worked _____ workweeks** during the Class Period in California and **you worked _____ pay period** in California during the PAGA Period. If you believe that you worked more workweeks and/or pay periods in California during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and

Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage and hour claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the Class Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the

_____ Final Approval Hearing	right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks and pay periods you worked at least one day in California during the Class Period and PAGA Period, respectively. The number of workweeks you worked during the Class Period and pay periods you worked during the PAGA Period according to Defendant’s applicable records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

The Action accuses Defendant of violating California labor laws by failing to pay minimum wages, failing to pay wages and overtime wages under Labor Code § 510, meal period liability under Labor Code § 226.7, rest period liability under Labor Code § 226.7, violation of Labor Code § 226, violation of Labor Code § 221, violation of Labor Code § 204, violation of Labor Code § 203, failure to reimburse necessary business expenses § 2802, failure to maintain records required under Labor Code §§ 1174 and 1174.5, and violation of Business & Professions Code § 17200 *et seq.* Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA.

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

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

So far, the Court has made no determination as to the merits of Plaintiff’s claims in the Action.

In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating a settlement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable, and adequate amount considering the strength of

the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing for Final Approval of the Settlement.

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

1. Defendant Will Pay \$575,000.00 as the Gross Settlement Amount. Defendant has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Enhancement Award, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than one hundred twenty (120) days after the Court signs the order finally approving the settlement.
2. Court Approved Payments from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following payments from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - a. Up to 35% of the Gross Settlement Amount to Class Counsel for attorneys' fees (\$201,250.00) and up to \$35,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - b. Up to \$10,000.00 as a Class Representative Enhancement Award for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Enhancement Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - c. Up to \$9,000.00 to the Administrator for administering the Settlement.
 - d. Up to \$50,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to Aggrieved Employees based on the number of pay periods they worked during the PAGA Period.
3. Net Settlement Amount Distributed to Class Members. After making the above payments in amounts approved by the Court, the Administrator will distribute the remaining Gross Settlement Amount ("Net Settlement Amount") by making Individual Class Payments to Participating Class Members based on the number of workweeks they worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and business expenses and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes owed on the Wage Portion. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

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

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out of the Class Settlement (“Request for Exclusion”). The Request for Exclusion should be a letter from the Class Member or his/her representative setting forth the Class Member’s name, present address, and email address or telephone number, and a simple statement communicating the Class Member’s election to be excluded from the Settlement. Class Members who opt-out (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed

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

8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”), to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member challenges regarding workweeks, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Releases of Claims. Effective upon remittance of the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by Defendant to the Settlement Administrator, Participating Class Members and Aggrieved Employees shall fully and finally release and discharge claims against Defendants as follows:

Release by Participating Class Members: Participating Class Members release and discharge Defendant from all claims, rights, demands, liabilities, and causes of action that are alleged, or reasonably could have been alleged, based on the facts and claims asserted in the Operative Complaint, including without limitation the following claims based on any theory of recovery for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512 (Unpaid Meal Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code § 226 (Failure to Provide Accurate Wage Statements); (5) Violation of Labor Code § 221 (Wage Garnishment); (6) Violation of Labor Codes § 204; (7) Violation of Labor Codes § 203; (8) Violation of Labor Code § 2802 (Failure to Reimburse Necessary Business Expenses); (9) Violation of Labor Code §§ 1174, 1174.5 (Failure to Maintain Records Required); and (10) claims for violation of the California Business and Professions Code §§ 17200, et seq.

Release by Aggrieved Employees: Aggrieved Employees and the California Labor and Workforce Development Agency are deemed to fully and finally release and discharge Defendant from all claims for the recovery of civil penalties, attorneys’ fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have, against Defendant, arising out of the violations alleged in the Operative Complaint or the PAGA Notice occurring during the PAGA Period, including failure to pay minimum wages and overtime, failure to provide compliant meal and rest period premiums, failure to pay all wages owed at discharge or resignation, failure to timely pay wages during employment, failure to provide complete and accurate wage statements, wage garnishment, failure to keep complete and accurate payroll records, failure to reimburse necessary business-related expenses, and violations

of Labor Code sections, 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698, *et. seq.*, 2800, and 2802.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of pay periods worked by each individual Aggrieved Employee.
3. Workweek and Pay Period Challenges. The number of workweeks and pay periods you worked in California during the Class Period and PAGA Period, respectively, as recorded in Defendant's applicable records, are stated in the first page of this Notice. You have until _____ to challenge the number of workweeks and/or pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

As explained above, you must submit a Request for Exclusion to the Administrator if you wish to opt-out of the Class Settlement. Your Request for Exclusion must be sent to the Administrator by mail, fax, or email by _____. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair and the amounts being requested for Class Counsel fees and litigation expenses and Class Representative Enhancement Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____.

Participating Class Members who wish to object will need to mail their objections to the Administrator only. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Angelina Fagundo v. North Coast Opportunities, Inc.* and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. **The deadline for sending written objections to the Administrator is _____.** Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department E, 100 North State Street, Ukiah, CA 95482. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.courtinfo.ca.gov/cases/courtwebsearch/courtwebsearch.asp>) and entering the Case Number 23CV00840.

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

DO NOT TELEPHONE OR CONTACT DEFENDANT'S ATTORNEYS TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

D.Law, Inc.

Emil Davtyan

emil@d.law

David Yeremian

d.yeremian@d.law

Alvin B. Lindsay

a.lindsay@d.law

Enoch Kim

e.kim@d.law

Antonia McKee

a.bliznets@d.law

450 N. Brand Blvd., Suite 840

Glendale, CA 91203

Telephone: (818) 962-6465

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2

September 5, 2023

VIA ON-LINE SUBMISSION ONLY TO:

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

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

VIA CERTIFIED MAIL TO:

(By certified mail to North Coast Opportunities, Inc. as follows)

North Coast Opportunities, Inc.
Attn: Anna Rozelski
Agent for Service of Process
413 N. State Street
Ukiah, CA 95482
Certified Mail Tracking Number: 7021 2720 0001 0176 4293

North Coast Opportunities, Inc.
14913 Lakeshore Dr., Suite C
Clearlake, CA 95422
Certified Mail Tracking Number: 7021 2720 0001 0176 4309

North Coast Opportunities, Inc.
850 Lakeport Blvd.
Lakeport, CA 95453
Certified Mail Tracking Number: 7021 2720 0001 0176 4286

Re: Labor Code § 2698, *et seq.* Penalties
PAGA Notice Letter to LWDA
Angelina Fagundo v. North Coast Opportunities, Inc.
Superior Court for Mendocino County

Gentlepersons:

This office represents Plaintiff Angelina Fagundo (“Plaintiff”) and other similarly aggrieved employees employed as hourly, non-exempt employees by Defendants in California, including but not limited to traffic controllers, flaggers, laborers and related positions during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 212, 218, 218.5, 218.6, 221, 226, 226.4, 226.7, 246, 248.5, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq.*; and 2802, 2810.5, provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*



The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants North Coast Opportunities, 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 with Plaintiff’s Class Action Complaint, which is attached to this Notice letter. The Complaint is being filed concurrently in Mendocino County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

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

Relevant Facts

As set forth below and at all times relevant hereto, Defendants’ unlawful policies and practices were centrally devised and commonly applied to all Aggrieved Employees, including Plaintiff.

Defendants are a nonprofit agency which provides emergency preparedness and fire response services primarily to communities in Lake and Mendocino Counties, though Defendants also provide specific services in Humboldt, Sonoma, Del Norte, Napa and Solano Counties. Plaintiff and Aggrieved Employees worked as hourly, non-exempt employees for Defendants, including as case managers, project assistants, project coordinators, and related positions pertaining to the provision of community programs and services. On information and belief, Defendants’ funding comes entirely from governmental and private grants. Funding is allocated to various community programs managed by Defendants. Applications for these grants, requires extensive planning on how the funding will be used, down to how many hours will be spent on management of the program for which funding is received. Renewal of these grants which are the lifeblood for Defendants, require strict adherence to the plan and extensive documentation proving that the funding was indeed used in accordance with the plan. This includes documentation of the time and labor that went into the program management.

Plaintiff began working for Defendants in February 2020. Plaintiff and Aggrieved Employees work out of Defendants’ offices and facilities across seven counties. Plaintiff was employed by Defendants as a Disaster Case Manager with duties that included greeting and serving as a primary point of contact with clients, assisting clients with coordination of necessary disaster services and resources and conducting clerical office duties.

Defendants operate a business which, owing to its reliance on grant funding, severely limits the



number of hours and wages that it will pay to employees for their labor. Defendants have planned and allocated a certain amount of their funding to labor, and must, as a condition of their grant funding, spend no more than what is allocated. To continue receiving grant funding, Defendants must show in “Activity Sheets” the work that was done for that particular program, and the number of hours that was spent completing it. If more hours than allocated for that period are recorded, it jeopardizes the renewal of the grant and there is a risk the funding will be revoked and have to be refunded because the funding was not used in accordance with the plan. As a result, if an employee works more hours than scheduled and what is allocated for the period in the program, that employee’s hours are not recorded and paid.

To that end, on information and belief, Defendants require that employees manually input inaccurate, rounded time entries into their electronic timekeeping system so that employees are not fully compensated for all their time worked. Plaintiff for example, was instructed by supervisor Robyn Bera to always input her hours as 8:00 AM to 12:00 PM and 1:00 PM to 5:00 PM on the electronic time record, despite Plaintiff beginning work earlier, working later, or working during her lunch hour. Some days, Plaintiff would arrive to work five minutes early to open the office. This entailed Plaintiff using her key card to access the building, unlocking the office, disarming the alarm, turning on the lights and “open” sign, opening the key box, turning on heating or air conditioning, putting out a COVID sign-in sheet, and opening the doors by 8:00 AM. Plaintiff routinely also stayed an additional five to ten minutes after her scheduled shift’s end to clean the employee break room, cleaning dishes, checking the key box, turning off the lights, setting the alarm and locking the doors. Frequently, Plaintiff’s meal periods were interrupted or cut short because a client would unexpectedly arrive, and she would have to attend to that client. Plaintiff was not allowed to record on Defendants’ electronic time system that her meal periods were shorter than one hour. Likewise, Plaintiff was not permitted to record that she started work at 7:55 AM or ended work at 5:10 PM or later. Instead, she had to adhere to Defendants’ universal timekeeping policy of rounding and shaving down her time worked to the nearest hour. In doing so, Defendants failed to compensate Plaintiff for all her time actually worked. Defendants’ practice and policy resulted in impermissibly rounded and shaved time, that was unfair and biased against Plaintiff and other Aggrieved Employees. This illegal rounding policy systematically underpaid Plaintiff and aggrieved employees during the entire length of their employment.

Defendants also failed to compensate Plaintiff and other Aggrieved Employees for other additional time worked. Plaintiff was provided a laptop for work which she could take home. After her scheduled shift end, Plaintiff frequently spent fifteen to twenty minutes answering work emails, or text messages on her personal mobile phone at home. This time was also not accounted for on Defendants’ electronic timekeeping system. Approximately four to five times per month, Defendants held meetings in the office. Defendants’ meetings frequently ran longer fifteen to thirty minutes past 5:00 PM, but Plaintiff and other Aggrieved Employees were not compensated for their time past their scheduled shift end. Plaintiff was also required to prepare the minutes after each meeting. She was also tasked with completing other projects such as a spreadsheet, grant applications and meeting agendas. All of these projects had short turn-around periods. For all tasks, Defendants allocated a certain number of hours which would be compensable. For example, drafting minutes, Plaintiff was only be permitted to record sixteen hours for the month. Plaintiff



spent well over this number of hours to complete the minutes. Plaintiff was required to record the meetings on her mobile phone so she could then draft the minutes. This required that Plaintiff review the audio recording for accuracy and then draft a detailed report. Plaintiff would then have to submit the minutes to supervisor Robyn Bera who would review and edit the minutes. She would then send them back to Plaintiff to further revisions. Much of this work was done after Plaintiff's scheduled hours, at home, after she had recorded the end of her workday on Defendants' timekeeping system. Defendants were aware of this but still failed to allow Plaintiff to record the actual number of hours she worked on the assignment. For example, sometime in January 2021, Plaintiff spent forty hours on drafting the minutes for a meeting she did not attend because she was on leave for two weeks to care for her ill mother. Despite not attending the meeting, Plaintiff was assigned to draft the minutes and piece them together from notes and recordings. When Plaintiff recorded forty hours on her Activity Sheet, she was told by her supervisor Ms. Bera, that she could only record sixteen hours as this was all that was allocated for that project. For this and many other drafting projects, Plaintiff was not fully compensated for all her time worked. Plaintiff was also not compensated for time she spent responding to work related text or "Teams" messages after her scheduled hours.

Defendants' policies and practices resulted in "off the clock work" because Plaintiff's work was not part of his recorded work time. As noted above, Defendants regularly required Plaintiff and Aggrieved Employees to work off the clock to complete special projects with a limit on the hours that could be recorded as worked. All of this work resulted in daily unpaid overtime. Plaintiff and Aggrieved Employees frequently worked more than eight (8), ten (10) and twelve (12) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid any wages for these additional hours. Further denying overtime compensation, Defendants practiced a "flex" policy where overtime hours were carried over to the next day so that employees would not incur overtime, or incur over forty hours per week. As a result of Defendants' actions, employees' hours were inaccurately recorded and Defendants failed to pay them at the appropriate rates for all hours worked and failed to pay all wages due and owing at termination or resignation. Defendants' also provided Plaintiff and Aggrieved Employees with inaccurate wage statements that prevented them from learning of these unlawful pay practices.

Defendants also regularly required Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the mobile phone and internet related expenses Plaintiff incurred in responding to calls, text and Teams messages from her supervisor Ms. Bera related to work. Plaintiff was also required to use her mobile phone to download the Google, Teams and ADP applications, record meetings, take photos of client identification cards and sending emails. Defendants failed to reimburse Plaintiff for these expenses.

Defendants also had a policy of paying Class members "Hazard Pay" and other annual incentives. Defendants failed to notify Aggrieved Employees how exactly these additional wages would be calculated in violation of Labor Code section 2810.5 which provides that at the time of hire, an employer shall provide to each employee, a written notice of the rates of pay. Subsequent wage statements fail to state the rate of calculation. To the extent Defendants paid both overtime and



Hazard and Incentive Pay to Plaintiff and the Class members in the same pay period, Defendants miscalculated and under paid overtime hours by failing to include all forms of remuneration, i.e. hazard and incentive pay, in the regular rate used to calculate and pay overtime. Additionally, to the extent Defendants paid any sick pay to Plaintiff during these pay periods, Defendants similarly miscalculated the rate at which it was paid by failing to account for all forms of remuneration in the regular rate in violation of Labor Code section 246(l)(1) which requires that paid sick time be calculated as the regular rate of pay for the workweek in which the employee uses paid sick time.

Defendants also failed to provide Plaintiff and Aggrieved Employees with lawful meal periods and rest breaks, as employees were required to remain under Defendants' control and were not provided with the opportunity to take timely and complete meal periods and rest breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders. In theory, employees could take a one-hour long meal period after a few hours of work, but Defendants also required that at least one employee remain at the office at all times to attend to incoming clients. Plaintiff's position required that she greet clients and by default, she became the employee who remained at the office on most days. Early on in her employment, Plaintiff attempted to take her meal period at 12:00 PM, but was told by her supervisor Ms. Bera that she should wait until others took their lunch first. This resulted in Plaintiff regularly taking her meal period after the fifth hour of work. Even when Plaintiff was able to take timely meal periods, these would frequently be interrupted by clients. The same problem arose for rest breaks. Plaintiff would have to abruptly stop her meal period or rest breaks to tend to clients. These interruptions or outright stoppages could not be recorded in Defendants' timekeeping system as Ms. Bera instructed Plaintiff to record a full, one-hour long meal period, even if Plaintiff and other Aggrieved Employees did not actually receive them in full. Moreover, on days where Plaintiff and other Aggrieved Employees worked ten hours or more, they did not receive a second meal period. Nor did they receive a third rest break on days where they worked in excess of ten hours. Plaintiff did not receive any meal or rest premium compensation as a result of these violations.

PAGA Claim Details, Legal Bases for Violations and Penalties:

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

Failure to Pay Minimum Wages

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

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the



control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

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

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked and unlawful rounding and time shaving. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to begin working before their scheduled start and end time to complete projects. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work and committed systematic unlawful deductions from Employees’ wages. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a).



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

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

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

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

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

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



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

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

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

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

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

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

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558,



including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants generally provided shortened rest breaks and failed to provide third rest breaks when employees worked in excess of ten hours, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to attend to clients at all times.

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

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

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

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, Defendants unlawfully received and/or collected wages from the Aggrieved Employees by requiring off the clock work, by rounding, by miscalculating overtime, and by automatically deducting time for meal periods when they were not lawfully provided and not paying one hour of pay at the regular rate of compensation for every meal and rest period violation endured by Plaintiff and the other Aggrieved Employees, as alleged above. By not compensating Employees for all hours worked and the other violations addressed above, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

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



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

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, cost of mobile phone usage and home internet usage. These expenses were necessary to perform their duties under Defendants' employ which was used throughout the course of Plaintiff and Aggrieved Employees' duties under Defendants' employ 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 Wage Statements in Violation of Labor Code § 226

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

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

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation



occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

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

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

In failing to pay Aggrieved Employees all wages, overtime, premium pay, etc., 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 and by rounding. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday. Defendants also failed to pay sick time at the correct rate miscalculating this pay by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204.

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

In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by improperly calculating sick pay, by not providing proper meal and rest periods, failing



to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under



Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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

Failure to Provide Accurate Sick Pay

Labor Code 246(l)(1) requires that paid sick time for nonexempt employees be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time. Defendants violated California Labor Code § 246 by failing to pay Employees' sick time at the correct rate. Defendants miscalculated sick pay by not including all forms of remuneration such as Hazard Pay and Incentive Pay in the regular rate in violation of Labor Code §§ 246 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.5 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

Plaintiff accordingly seeks this relief available for Defendants' failure to provide Aggrieved Employees with all their sick pay wages in violation of Labor Code §§ 246 and the civil and statutory penalties available and applicable under Labor Code §§ 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

Labor Code § 2810.5 provides that: "At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing" specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Defendants failed to provide notice of how Hazard Pay and Incentive Pay is earned, calculated and paid to employees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2810.5, 1198, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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



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

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

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 201.3, 202, 203, 204, 212, 226, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2810.5, and 2698 *et seq.*, including as follows:

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

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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



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

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

(f) Unlawful Deductions: For Defendants' unlawful deductions from wages under Labor Code §§ 221, 1197, 1197.1, 1198, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(g) Failure to Pay Sick Days at the Appropriate Pay of Pay: For Defendants' failure to pay Employees' sick time at the correct rate miscalculating this pay by not including all forms of remuneration in the regular rate, in violation of Labor Code §§ 246 and the civil and statutory penalties available and applicable under Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(h) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code § 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

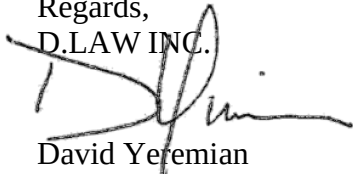
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case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

EXHIBIT 3