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11 Aggrieved Employees

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

14 NAOMI HUDSON, on behalf of herself
15 and all other aggrieved employees of
16 Defendants in the State of California,

17 Plaintiff,

18 v.

19 WILHELM LLC, and DOES 1
20 THROUGH 50, inclusive,

21 Defendants.

Case No.: 24-cv-01602-YGR

*[Assigned to District Judge Yvonne
Gonzalez Rogers]*

**DECLARATION OF VILMARIE
CORDERO IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR APPROVAL OF PAGA ACTION
SETTLEMENT**

Date: May 20, 2025

Time: 2:00 p.m.

Crtrm: 1

Judge: Hon. Yvonne Gonzalez Rogers

Complaint Filed: December 15, 2023

Trial Date: None set

24-cv-01602-YGR

DECLARATION OF VILMARIE CORDERO IN SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION FOR APPROVAL OF PAGA ACTION SETTLEMENT

1 I, Vilmarie Cordero, declare:

2 1. I am an attorney at law licensed to practice before all courts in the State of
3 California. I am one of the Shareholders of the law firm GrahamHollis, APC in San Diego,
4 California. Associate Taylor M. Gee and I are the primary attorneys from my firm handling
5 this case. I am thoroughly familiar with and have personal knowledge of the facts stated
6 herein. If called as a witness, I could and would competently testify to the information set
7 forth herein.

8 2. I submit this declaration in support of Plaintiff Naomi Hudson's ("Plaintiff")
9 Unopposed Motion for Approval of the Private Attorney General Act Action Settlement
10 reached between Plaintiff and Defendant Wilhelm, LLC ("Defendant") (collectively
11 referred to as the "Parties") in this action.

12 3. A true and correct copy of the fully executed Private Attorneys General Act
13 Settlement Agreement and Release ("Settlement") is attached hereto as **Exhibit 1**.

14 4. A true and correct copy of the letter explaining the settlement that will be sent
15 out to each Aggrieved Employee is attached as **Exhibit 2** and is incorporated herein by
16 reference.

17 5. In accordance with the Private Attorneys General Act of 2004 ("PAGA"), my
18 office caused the Settlement Agreement to be submitted to the California Labor and
19 Workforce Development Agency ("LWDA") on April 14, 2025. A true and correct copy
20 of the confirmation of submission is attached hereto as **Exhibit 3**.

21 6. My firm has searched for other lawsuits, and we are aware of the following
22 PAGA representative actions:

- 23 a) *Lainez v. Wilhelm, LLC*, Case No. 23-cv-04421-KAW ("*Lainez Action*"),
24 currently pending in the U.S. District Court, Northern District of California,
25 before Honorable Kandis A. Westmore; and
26 b) *Johnson v. Wilhelm, LLC*, Case No. 25CV00575, currently pending in
27 California Superior Court, County of Sonoma.

28 7. I have also conferred with defense counsel and inquired about any other

lawsuit or action filed against Defendant in California on behalf of the individuals who would also be Aggrieved Employees as defined in the Settlement, and I was informed there are no other representative or class action lawsuits pending in any other California courts.

PLAINTIFF'S COUNSEL'S EXPERIENCE

8. I have been a Member of the American Bar Association since my admission to the Puerto Rico State Bar in January 2006. I have been a Member of the New York State Bar since April 2008, and a Member of the State Bar of California since January 2010. I received a Master of Law (LLM) with a concentration in Employment and Labor Law from the University of San Diego School of Law in May 2009.

9. I have represented employees in employment litigation since January 2006. I have worked in class and representative matters since I joined GrahamHollis, APC in January 2010.

10. My firm and I have been appointed as class counsel and received approval of settlements in over one hundred class and PAGA representative actions in district and state courts in California. A list of cases in which my firm has served as class counsel for plaintiffs in wage and hour employment actions pending throughout California is attached hereto as **Exhibit 4**.

11. Shareholder Graham Hollis has been a member of the State Bar of California since 1985. Mr. Hollis has personally tried many bench and jury trials to verdict in various courts in California.

12. Associate Taylor M. Gee was admitted to the State Bar of California in June 2023. She has represented employees in class and representative actions and has assisted in a number of class and/or representative action cases, including, but not limited to, *Basham et al. v. Tailored Living Choices*, No. 3:23-cv-02678 (N.D. Cal.); *Espinoza v. Guardian Industries, LLC*, No. 1:24-CV-00853-KES-SAB (E.D. Cal.); *Hood v. E&E Ryder, LLC et al.*, No. CVRI2300296 (Cal. Super. Ct. Riverside Cnty.); *Middleton v. Householder Group Estate and Retirement Specialist, LLC, et al.*, No. CVRI2203570 (Cal. Super. Ct. Riverside Cnty.); *Cortes Diaz v. Option One Corporation*, No. CIVSB2425422

(Cal. Super. Ct. San Bernardino Cnty.); *Harrison v. Petco Animal Supplies Stores, Inc.*, No. 32-2023-00033460-CU-OE-CTL (Cal. Super. Ct. San Diego Cnty.); *Troncoso v. Intend, Inc.*, No. 25CU013894C (Cal. Super. Ct. San Diego Cnty.); *Muzquiz v. Briles Aerospace, LLC*, No. 23STCV15241 (Cal. Super. Ct. Los Angeles Cnty.); *Phan et al., v. TFC Partners, Inc., et al.*, No. 23CV056741 (Cal. Super. Ct. Santa Clara Cnty.); and *Soberanis v. Restaurant Acapulco, LLC et al.*, No. 30-2023-01354959-CU-OE-CXC (Cal. Super. Ct. Orange Cnty.).

13. This PAGA Settlement provides for the payment of PAGA civil penalties to the California LWDA and approximately 1,567 current and former Aggrieved Employees who worked for Defendant in California at any time between June 19, 2019, to the Court's approval of this Settlement.

14. I have reviewed the Private Attorney General Act (PAGA) Settlement Agreement in this matter, and I believe that it is fair, reasonable, and adequate considering the highly disputed nature of the claims alleged, and the risks and expenses involved in continued litigation.

CASE BACKGROUND AND PROCEDURAL HISTORY

15. Defendant is a limited liability company formed in Nevada that provides traffic control and tree service solutions in California. The company conducts substantial business throughout California, including Sonoma and its neighboring counties.

16. Defendant offers tree trimming services and traffic control services for third-party companies, including public entities. For example, prior to March 15, 2022, Defendant maintained a contract with PG&E, wherein their employees were responsible for directing and managing traffic while PG&E conducted work on lay lines and roads.

17. Among others, Defendant claims its non-exempt employees are covered by IWC Wage Order 16 because Wilhelm is and has been engaged in timber and logging operations, and it maintains a timber operator's license during part of the relevant PAGA period (as required by California Public Resources Code §§ 4571 through 4586).

18. Plaintiff was employed by Defendant from January 10, 2022, to June 23, 2023,

1 as a non-exempt “flagger.”

2 19. Plaintiff was not covered by a Collective Bargaining Agreement (“CBA”) at
3 any point during her employment with Defendant. However, about 55% of the non-exempt
4 employees working for Defendant from June 2019 through the date of the mediation were
5 covered by a CBA and were members of the Local Union 1245, International Brotherhood
6 of Electrical Workers at some point during their employment.

7 20. In or about January 1, 2020, all non-exempt employees of Defendant working
8 as tree trimmers became members of the Local Union 1245 and were covered by a CBA.

9 21. Similar to Plaintiff, other non-exempt employees of Defendant held outdoor,
10 labor-intensive jobs, including positions such as “flaggers,” “forepersons,” “machine
11 operators,” and “tree trimmers.”

12 22. On October 10, 2023, Plaintiff provided her initial written notice to the
13 LWDA and to Defendant asserting claims for civil penalties pursuant to the PAGA
14 stemming from alleged violations of the California Labor Code.

15 23. Plaintiff’s LWDA notice differed from the previously filed *Lainez* LWDA
16 notice against Defendant Wilhelm in that Plaintiff asserted additional PAGA violations
17 that *Lainez* had not alleged, including new claims for failure to provide recovery periods,
18 suitable seating, and reporting time pay. Subsequently, Plaintiff amended her written notice
19 to the LWDA on two occasions. A true and correct copy of Plaintiff’s initial and amended
20 written notices to the LWDA are attached herein as **Exhibit 5**.

21 24. On December 15, 2023, Plaintiff filed her original Complaint; Case No.
22 23CV02033, against Defendant in the Superior Court of California for the County of
23 Sonoma on behalf of all current and former Aggrieved Employees who worked for
24 Defendant in California.

25 25. Plaintiff asserted a single representative cause of action under PAGA against
26 Defendant for alleged violations of California Labor Code sections 201, 202, 203, 204,
27 210, 213, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 558.1, 1174, 1174.5,

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1 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802.

2 26. On March 14, 2024, Defendant removed the case to the United States District
3 Court for the Northern District of California, Oakland Division; Case No. 24-cv-01602-
4 YGR.

5 27. On March 19, 2024, Defendant filed a Notice of Pendency of Other Action
6 and Administrative Motion to consider whether Plaintiff's case was related to the *Lainez*
7 *Action*¹.

8 28. The *Lainez* Action was filed on March 24, 2021 as a class and PAGA Action,
9 and removed to the U.S. District Court, for the Northern District of California, on August
10 25, 2023.

11 29. On March 27, 2024, the *Lainez* Court denied Defendant's Administrative
12 Motion to consider whether Plaintiff Hudson's PAGA case was related to the *Lainez*
13 Action.

14 30. On April 12, 2024, Plaintiff filed her Motion to Remand, which this Court
15 vacated, without prejudice, pending the Parties anticipated mediation.

16 31. The Plaintiff in the *Lainez* Action filed a Motion to Remand on December 11,
17 2023.

18 32. The Court in the *Lainez* Action issued an Order denying Plaintiff Lainez's
19 Motion to Remand on September 25, 2024.

20 33. On that same date, *Lainez's* individual PAGA claims were compelled to
21 arbitration, and the *Lainez* Action was stayed pending arbitration. A true and correct copy
22 of the order denying *Lainez's* Motion to Remand, and compelling *Lainez* to arbitration is
23 attached herein as **Exhibit 6**, for ease of reference.

24 34. On October 23, 2024, the Parties participated in a full-day mediation with
25 Judge Wynne S. Carvill, a mediator with extensive experience in California wage and hour
26 litigation. The Parties discussed the many difficult legal and factual issues of this case at
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28 ¹ Defendant's Motion to Consider Whether Cases Should Be Related was filed before the *Lainez* Court in the United States District Court Northern District of California, Oakland Division.

1 mediation. The mediator provided a neutral analysis of the issues and risks to both sides,
2 and Plaintiff was required to make reasonable compromises considering the facts, issues,
3 and risks presented.

4 35. The Parties reached a verbal agreement regarding the resolution of the *Hudson*
5 and *Lainez* Action at mediation.

6 36. The Parties further settled Plaintiff Hudson's individual claims through a
7 separate individual settlement agreement in exchange of a full release of Plaintiff's
8 wrongful termination, unpaid wages, and statutory penalties claims.

9 37. On or around February 27, 2025, the Parties fully executed the PAGA
10 Settlement.

11 38. In accordance with California Labor Code section 2699(1)(2), a copy of the
12 notice and the Settlement was submitted to the LWDA on April 14, 2025.

13 **DISCOVERY AND INVESTIGATION OF THE PAGA CLAIMS**

14 39. Plaintiff propounded a first set of special interrogatories asking for Defendant
15 to provide the number of current and former non-exempt employees, and to identify each
16 non-exempt employee's hire date, termination date, job title, and locations where the non-
17 exempt employee worked, on February 13, 2024. Plaintiff also requested the contact
18 information, including phone numbers, addresses, and email addresses, of all Aggrieved
19 Employees.

20 40. Soon thereafter, the Parties engaged in meet and confer efforts and decided to
21 participate in private mediation.

22 41. Prior to the mediation, Defendant provided Plaintiff's counsel with the PAGA
23 List containing all the employee identification numbers, job titles, and inclusive dates of
24 employment for all non-exempt employees working for Defendant from June 2019 through
25 approximately June 2024.

26 42. Defendant also provided Plaintiff's counsel with the total number of PAGA
27 Aggrieved Employees; the total number of pay periods; CBAs; handbooks; and relevant
28 company policies and procedures regarding meal and rest breaks, recovery breaks, heat

1 illness prevention, time and payroll records, payment of wages, calculation of the overtime,
2 calculation of the regular rate of pay, and payment of bonuses.

3 43. Defendant further provided, in Excel, the clock in and out times and payroll
4 records for a 25% sample of the 1,019 non-exempt employees identified as Aggrieved
5 Employees at that time.

6 44. After receiving the documents and time and payroll records, the Parties
7 engaged in additional meet and confer efforts and exchanged additional information,
8 including information and documentation concerning the different pay code definitions;
9 payroll frequency; pay periods; definition of the workday and workweek; and number of
10 pay periods within the PAGA Period.

11 45. Defendant further produced copies of the CBA and identified which
12 employees worked for them under the CBA, and the number of pay periods these
13 employees worked under any of the applicable CBAs. Of the total Aggrieved Employees,
14 roughly 55% are or were Aggrieved Employees covered by a CBA.

15 46. Defendant also produced the names, telephone numbers, and email addresses
16 of 253 PAGA Aggrieved Employees after the Parties engaged in a Belaire-West opt-out
17 procedure.

18 47. My firm spent considerable time calling PAGA Aggrieved Employees and
19 conducting in depth interviews relating to the Labor Code violations alleged in the
20 Complaint. My firm was not able to interview all 253 Aggrieved Employees prior to the
21 mediation. Nonetheless, my firm obtained approximately 25 detailed interviews from other
22 non-exempt employees who agreed to discuss with us their experiences while working for
23 Defendant. These interviews included current and former union and non-unionized
24 employees who worked for Defendant as “flaggers,” “traffic controllers,” “truck drivers,”
25 “foremen,” “equipment/machine operators,” and “tree climbers.”

26 48. Defendant provided ample documents and information for our firm to fully
27 investigate Plaintiff’s allegations and the potential value of the PAGA Claims.

28 49. In preparation for mediation, my firm reviewed the documents provided by

1 Defendant and performed a complete analysis of the time and pay records and determined
2 the number of pay periods, the average shift length, the number of Aggrieved Employees
3 at any given time, the violation rate of some claims, and the value of any potential PAGA
4 penalty.

5 50. My firm further conducted a thorough investigation into the merits and legal
6 basis of each of Plaintiff's claims and performed significant legal research with respect to
7 the applicable law and all defenses raised by Defendant.

8 51. My firm's investigation allowed us to prepare a complete liability analysis
9 and estimate the potential exposure to Defendant if Plaintiff succeeded on all claims at trial,
10 which we then measured against the relative strengths and weaknesses of the claims to
11 identify an appropriate range of settlement figures.

12 52. This analysis was based on information obtained from Defendant's records,
13 Defendant's policies, as well as facts and information gathered from the interviews with
14 PAGA Aggrieved Employees regarding the alleged claims.

15 53. Moreover, prior to the mediation, the Parties exchanged well-researched
16 damages' analysis and mediation briefs.

17 54. Moreover, Defendant provided additional documents and information after
18 the mediation for Plaintiff's counsel to evaluate the regular rate of pay claims and overtime
19 claims based on the alleged failure to include all non-discretionary compensation and
20 bonuses into the calculation of the regular rate of pay for overtime premiums, meal, and
21 rest break premiums.

22 **PLAINTIFF'S PAGA CLAIMS AND DEFENDANT'S DEFENSES**

23 55. Plaintiff alleges that Defendant systematically failed to comply with its legal
24 obligations under the California Labor Code and is therefore liable for civil penalties under
25 PAGA.

26 56. Plaintiff contends that Defendant did not provide compliant meal and rest
27 periods and failed to provide premiums in lieu thereof. Specifically, Defendant failed to
28 provide Aggrieved Employees with adequate time and failed to staff enough workers to

1 complete all the work duties within the allotted time. As a result, Aggrieved Employees
2 were required to work during their meal and rest periods and off-the-clock. Though
3 Aggrieved Employees frequently experienced short, interrupted, late, and/or on-duty meal
4 periods, Defendant always deducted 30 minutes meal periods from their time records and
5 rarely paid meal period premiums. Many employees never received a single meal or rest
6 period premium.

7 57. Plaintiff further alleges that Defendant failed to provide recovery periods
8 when Aggrieved Employees worked outside in temperatures over 80 degrees and failed to
9 implement adequate “high heat procedures” when the temperature exceeded 95 degrees.

10 58. Likewise, Plaintiff alleges Defendant failed to provide Aggrieved Employees
11 with suitable seats. Specifically, Aggrieved Employees were required to work outside at
12 secluded locations. As a result, Aggrieved Employees were unable to sit and rest when they
13 were not performing their primary duties.

14 59. Moreover, Plaintiff alleges that Defendant failed to pay for all hours worked
15 including minimum, regular, and overtime wages. Specifically, Defendant failed to pay all
16 wages owed by way of auto-deducting thirty minutes for meal periods that were not taken
17 or that were on-duty. Similarly, Defendant shaved hours worked to evade payment of
18 overtime premium wages. Moreover, Defendant failed to accurately calculate overtime
19 wages because they did not accurately calculate the regular rate whenever incentive pay
20 was paid to its non-exempt employees. Specifically, Plaintiff Hudson alleged receiving
21 bonuses and working overtime during her employment. Defendant failed to factor the non-
22 discretionary bonuses into the regular rate calculation.

23 60. As a direct result of the aforementioned violations, Defendant failed to
24 maintain accurate records and furnish accurate itemized wage statements.

25 61. Plaintiff further contends that she and other Aggrieved Employees working as

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1 “flaggers” were and are not part of the CBA signed by other Aggrieved Employees.²

2 62. Conversely, Defendant asserts that the court in the *Lainez* Action determined
3 that the meal break and overtime PAGA claims were preempted because they were covered
4 by a valid CBA. Specifically, Defendant claims that the Honorable U.S. Magistrate Judge
5 Kandis A. Westmore’s ruling stating *Lainez*’s PAGA claims for “overtime or meal period
6 wages exist solely because of the CBA” applies to Plaintiff Hudson even though she was
7 never covered by a CBA.

8 63. Defendant further contends that Plaintiff faces a substantial burden to
9 establish that all 1,567 Aggrieved Employees are similarly situated given the diverse job
10 positions and duties (e.g., “flaggers,” “traffic controllers,” “truck drivers,” “foremen,”
11 “equipment/machine operators,” and “tree climbers.”)

12 64. Defendant also claims that even if the claims are not found preempted, they
13 will prevail on the merits of the claims. Defendant asserts they complied with the California
14 Labor Code at all times, and Defendant will ultimately prevail on all claims, including, but
15 not limited to, the off-the-clock, rounding, meal and rest break, and regular rate claims at
16 issue.

17 65. Defendant firmly believes it met its obligation to provide employees with the
18 opportunity to take lawful and off-duty meal breaks by giving its employees the freedom
19 to build their own schedule. Plaintiff argues that Aggrieved Employees were unable to take
20 meal and rest breaks because their schedules either required them to watch construction
21 equipment while third-party construction workers took their lunch or there was not enough
22 time to descend from the trees, remove the protective equipment, and walk to their cars to
23 take a break.

24 66. Similarly, Defendant contends that their policy permitted employees to take
25 cool down and recovery periods whenever they felt the need. However, Plaintiff and other
26 witnesses asserted that they were unable to take recovery periods all the time, and many
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28 ² All Aggrieved Employees employed as “tree trimmers” signed CBAs.

1 asserted that they were completely unaware of Defendant's alleged high heat policy.

2 67. Likewise, Defendant contends that they enforced their written policies to
3 provide employees with reporting time and reimbursement for reasonable and necessary
4 expenses. Plaintiff and other witnesses interviewed have alleged they were not properly
5 reimbursed for their use of their personal cellphone for work related purposes.

6 **EVALUATION OF THE CLAIMS FOR SETTLEMENT PURPOSES**

7 68. I believe the Settlement provides a real and meaningful benefit to the State of
8 California and the Aggrieved Employees, considering the highly disputed nature of the
9 claims and the risk that the Court may, in its discretion, reduce the amount of any judgment
10 Plaintiff might achieve. Our determination of a fair value of the Settlement was based on a
11 number of factors, including our own analysis of the law as applied to the facts of this case,
12 the suitability of the case for representative treatment, Plaintiff's claims and the associated
13 damages, as well as Defendant's potential defenses thereto.

14 69. The Settlement results in a substantial benefit to the LWDA and all Aggrieved
15 Employees, and the Gross Settlement Amount of \$1,225,000.00 is an excellent result
16 warranting approval.

17 70. In reaching this amount, Plaintiff's counsel carefully considered the strength
18 of the case versus the amount offered in settlement, and the risk, expense, and complexity
19 of proving each claim at trial. The Parties conducted a lengthy and thorough investigation
20 into the merits of Plaintiff's claims prior to entering into the Settlement.

21 71. To evaluate Defendant's potential liability, Plaintiff's Counsel used the
22 following formula: (Initial Violation Penalty) x (Violation Rate) x (Number of Pay Periods
23 During Relevant Period). Based on both the time and pay records produced, and our
24 investigations, Plaintiff's calculations assumed an 84% violation rate for meal breaks; a
25 93% violation rate for rest breaks; a 33% violation rate for recovery periods; a 49%
26 violation rate for minimum/regular/overtime wages; a 41% violation rate for reporting time
27 pay; an 88% violation rate for reimbursement; an 100% violation rate for failure to pay
28 waiting time penalties; and an 100% violation rate for failure to furnish accurate wage

1 statements.

2 72. Our firm then estimated the maximum potential recovery of PAGA civil
3 penalties as approximately \$17,319,546.00, of which \$9,319,468.00 represents the value
4 of the civil penalties for the pay periods worked by the non-union employees, and
5 \$8,000,078.00 represents the value of the civil penalties for the pay periods worked by the
6 union employees

7 73. Plaintiff's counsel therefore determined Defendant's maximum potential
8 liability at approximately \$17,319,546.00, of which \$4,329,887.00 would go to Aggrieved
9 Employees, and \$12,989,660.00 would go to the LWDA. This amount represents the
10 maximum exposure Defendant could potentially face based on an "everything goes right"
11 scenario for all claims, as well as the presumption that the Court would permit stacking
12 and not reduce the civil penalties as unjust, arbitrary, oppressive, or confiscatory. The
13 respective penalties break down as follows:

- 14 a. For the failure to provide compliant meal periods claim, Plaintiff's counsel
15 used the civil penalty outlined in Labor Code section 558 and determined the
16 value of the claim was approximately \$852,936.00;
- 17 b. For the failure to provide compliant rest periods claim, Plaintiff's counsel
18 used the civil penalty outlined in Labor Code section 2699(f) and determined
19 that the value of the claim was approximately \$1,888,644.00;
- 20 c. For the failure to provide compliant recovery periods claim, Plaintiff's
21 counsel used the civil penalty outlined in Labor Code section 2699(f) and
22 determined that the value of the claim was approximately \$1,478,598.00;
- 23 d. For the failure to provide reporting time pay claim, Plaintiff's counsel used
24 the civil penalty outlined in Labor Code section 2699(f) and determined that
25 the value of the claim was approximately \$1,837,046.00;
- 26 e. For the failure to pay minimum and overtime wages claim, Plaintiff's counsel
27 used the civil penalty outlined in Labor Code section 1197.1 and determined
28 that the value of the claim was approximately \$2,195,494.00;

- 1 f. For the failure to pay waiting time penalties claim, Plaintiff’s counsel used the
2 civil penalty outlined in Labor Code section 2699(f) and determined that the
3 value of the claim was approximately \$128,300.00;
- 4 g. For the failure to provide accurate itemized wage statements claim, Plaintiff’s
5 counsel used the civil penalty outlined in Labor Code section 2699(f) and
6 determined that the value of the claim was \$4,480,600.00;
- 7 h. For the failure to maintain accurate records claim, Plaintiff’s counsel used the
8 civil penalty outlined in Labor Code section 1174.5 and determined that the
9 value of the claim was \$515,000.00; and
- 10 i. For the failure to provide reimbursement for necessary business expenses,
11 Plaintiff’s counsel used the civil penalty outlined in Labor Code section
12 2699(f) and determined that the value of the claim was \$3,942,928.00.

13 74. These estimates assume Plaintiff would (1) successfully establish liability on
14 all claims alleged; (2) the Court would allow “stacking” of penalties for the same
15 underlying violation, and (3) Plaintiff’s estimated damages would be awarded in their
16 entirety. Accordingly, this estimated value represents an unlikely scenario given potential
17 defenses and variance among Aggrieved Employees likely to reduce the overall value of
18 some claims.

19 75. Since this litigation began, Defendant has denied any liability for the claims
20 alleged, contending that they followed all applicable laws with respect to Plaintiff’s and
21 Aggrieved Employees’ employment.

22 76. As aforementioned, Plaintiff is aware of several significant risks of continued
23 litigation. Specifically, Plaintiff will nevertheless face significant litigation on: (1) the
24 preemption issue on behalf of other Aggrieved Employees who are covered by a CBA; (2)
25 the validity of the arbitration agreements; (3) establishing that all 1,567 Aggrieved
26 Employees are similarly situated; (4) the merits of the claims; (5) and any appeals of
27 judgment entered in favor of Plaintiff.

28 77. While Plaintiff believes her claims have merit, Plaintiff also acknowledges

1 the difficulty in establishing at trial the occurrence of these alleged violations or the
2 existence of unlawful patterns and practices affecting the Aggrieved Employees.

3 78. Plaintiff recognizes the risk of possible adverse rulings on liability, and
4 damages on the PAGA representative claims asserted. Protracted litigation would also
5 involve numerous additional depositions, written discovery, law and motion practice, and
6 trial, all of which would involve significant time and expense for all involved.

7 79. In addition, because Plaintiff's claims are based solely on PAGA violations,
8 had the case proceeded to trial, there is substantial risk that any civil penalties assessed
9 would have been reduced under Labor Code section 2699(e)(2), which permits a court to
10 reduce the award of civil penalties if the full amount of penalties would be "unjust,
11 arbitrary, and oppressive or confiscatory."

12 80. The settlement reached will provide Plaintiff, the state of California, and the
13 Aggrieved Employees with a financial recovery and extinguish the risks associated with
14 continued litigation, trial, post-trial motions, and any subsequent appeals.

15 81. Indeed, continued litigation may result in several years of delay, and great
16 expense to the Parties before the case is finally resolved. Whereas this settlement provides
17 the State and the Aggrieved Employees with a significant recovery now, making it well
18 within the range of reasonableness.

19 82. The \$1,225,000.00 Gross Settlement Amount provides a real and substantial
20 benefit to Plaintiff and the Aggrieved Employees, estimated in a gross amount of \$27.34
21 per pay period—calculated by dividing the GSA \$1,225,000 by the 44,806 estimated pay
22 periods.

23 83. The Parties estimate the number of pay period during the PAGA Period June
24 19, 2019 to the present at 44,806. Therefore, the net value per pay period to the Aggrieved
25 Employees is estimated at \$6.84 per pay period (\$306,250/44,806). The Settlement further
26 provides Aggrieved Employees an estimated average value of \$312 per Aggrieved
27 Employee. Plaintiff's counsel calculated from the sample time and pay records that
28 Aggrieved Employees worked on average 52 pay periods. Thus, Plaintiff's counsel

1 estimates an average recovery of \$355.68 (\$6.84*52 pay periods) per Aggrieved
2 Employee.

3 84. This is an excellent result considering the highly disputed nature of the claims
4 and the risks associated with continued litigation discussed herein. Based on my
5 experience, I believe the settlement is a fair and reasonable compromise of the PAGA civil
6 penalties claims alleged in Plaintiff's and *Lainez's* PAGA Actions.

7 85. All risks and benefits considered *in toto* support a settlement of a lesser
8 amount than the maximum potential damages outlined above.

9 86. The Settlement is the result of extensive, non-collusive negotiations between
10 the Parties. These negotiations were based on discovery and investigations conducted by
11 each party and included the input of a neutral third-party mediator. The settlement
12 negotiations were conducted in good faith at arm's length and were not collusive.

13 87. In reaching the Settlement, I carefully considered the following: the strength
14 of the case versus the amount offered in Settlement; the risk, expense, and complexity and
15 likely duration of further litigation through trial, the present state of the law as it applies to
16 PAGA actions, the burdens of proof necessary to establish liability against Defendant, the
17 fairness and reasonableness of the Settlement agreed to by the Parties, and the best interest
18 of the Aggrieved Employees to whom substantial benefits will accrue.

19 88. Absent a settlement, the Parties would likely spend considerable time, effort,
20 and money on additional discovery and depositions, including substantial meet and confer
21 and motion work, preparing cross-motions for summary judgment, and other substantial
22 motion practice. For example, Plaintiff anticipates re-noticing her Motion to Remand, and
23 Defendant will file a Motion to Compel Arbitration of Plaintiff's individual claims, a
24 Motion to Dismiss and Stay some of the PAGA claims, and a Motion for Judgment on the
25 Pleadings. In addition, the Parties would further need to propound formal written
26 discovery, conduct witnesses' depositions, retain experts, conduct expert depositions, and
27 prepare further damages analysis for trial purposes, among others. Specifically, Plaintiff
28 anticipates the witnesses' costs and expert fees associated with engaging an expert to

1 analyze the time and pay records of the thousands Aggrieved Employees in this case will
2 be significantly high.

3 89. Indeed, even assuming Plaintiff is successful at proving all of her claims at
4 trial and recovered the full amount of damages as estimated, Defendant may appeal such a
5 judgment in Plaintiff's favor, potentially drawing out the litigation for many more years
6 with no guarantee of recovery by Plaintiff or the Aggrieved Employees. As a result, the
7 Parties would incur considerably more attorneys' fees and costs through trial. This
8 Settlement avoids these risks, and the accompanying expense, and instead provides
9 immediate and substantial monetary relief.

10 90. I acknowledge the cost and delay of continued proceedings necessary to
11 prosecute the action through trial and appeal and, in bringing this action, I carefully
12 considered the uncertain outcome and risks associated with any litigation, particularly
13 complex actions such as this. I am also mindful of the inherent problems of proof, and
14 possible defenses to the causes of action asserted in the lawsuit. Although Plaintiff asserts
15 and indeed believes Defendant is liable to the State of California and Aggrieved Employees
16 for civil penalties, none of the claims are guaranteed. These beliefs, however, do not vitiate
17 the risk that Defendant could successfully undercut the value of the damages recoverable
18 or escape liability altogether.

19 91. This fairness of this Settlement is further supported in that it was obtained
20 through the assistance of Judge Wynne S. Carvill, an experienced wage and hour mediator,
21 and through the result of extensive, non-collusive negotiations between the Parties,
22 conducted at arm's length, and informed by substantial factual and legal investigation. At
23 all times, the Parties' negotiations were hard-fought and conducted at arm's length between
24 attorneys with substantial wage and hour class and PAGA action experience, which fully
25 informed the Parties of the relative strengths of the claims and the benefits of the proposed
26 Settlement, prompting each side to compromise.

27 92. Based on my years of experience litigating wage and hour claims, I am well-
28 qualified to evaluate the claims and viability of defenses in this action and I strongly

1 support this Settlement. I believe the settlement amount is a fair and reasonable
2 compromise of the claims held by these Aggrieved Employees based on the strengths and
3 weaknesses of the claims, the avoidance of further risk, and the time and expense of
4 pursuing further litigation.

5 **SUMMARY OF SETTLEMENT TERMS**

6 93. PAGA Aggrieved Employees. The PAGA Aggrieved Employees covered by
7 the PAGA Settlement are those current and former non-exempt employees of Wilhelm that
8 worked in California during the PAGA Period (i.e., the period starting June 19, 2019
9 through the date of approval of the PAGA Settlement, subject to the limitations of the
10 Escalator Clause) [SA § 1.4.]

11 94. Scope of the Release. The Settlement provides Defendant will pay the Gross
12 Settlement Amount of \$1,225,000.00 in exchange for the following release:

13 “Plaintiff, the State of California, and All Aggrieved Employees will
14 release the Released Parties from any and all civil penalties claim that
15 were alleged, or that could have reasonably alleged, based on the facts
16 alleged in the Complaint and/or the PAGA Notices, including but not
17 limited to, any claims for civil penalties arising from Defendant’s
18 alleged violations of the California Labor Code for, inter alia, failure
19 to recovery periods and/or timely pay for recovery periods premiums;
20 failure to provide compliant meal periods and/or timely pay premiums;
21 failure to provide rest periods and/or timely pay premiums; failure to
22 timely pay all wages, including but not limited to minimum, regular,
23 and overtime wages (including based on allegations of pre-shift/post-
24 shift/meal period off-the-clock work claims; rounding; auto deducted
25 time; and regular rate of pay issues); failure to provide separate rest
26 period compensation for nonproductive work; failure to provide
27 accurate itemized wage statements; failure to reimburse for business
28 expenses; and failure to pay all wages due during and upon separation
of employment, and including but not limited to PAGA claims
predicated on or that could have been predicated on alleged violations
of Cal. Lab. Code §§ 201, 202, 203, 204, 210, 213, 218.5, 218.6, 223,
225.5, 226, 226.3, 226.6, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,
1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and the provisions
within the governing Wage Order.” [SA § 5.1]

95. Gross Settlement Amount. The sum of \$1,225,000.00 represents the total

1 amount payable under the Settlement by Defendant, including without limitation payments
2 to all PAGA Aggrieved Employees, payment to the LWDA, payment of attorney's fees
3 and costs, and payment of settlement administration costs. [SA § 1.9.]

4 96. Settlement Administrator. The Parties selected Apex Class Action LLC
5 ("APEX") as the Settlement Administrator. APEX was selected following a competitive
6 bidding process. APEX's tasks shall include updating the PAGA Aggrieved Employees'
7 addresses, determining the individual PAGA payment amount for each Aggrieved
8 Employee, distributing the payments to the Aggrieved Employees and the LWDA,
9 performing tax related accounting and administrative services, and distributing funds from
10 undeliverable or uncashed settlement checks to the California State Controller's Office in
11 the name of the PAGA Aggrieved Employee. [SA §§ 4.1-4.10.]

12 97. APEX will mail the Individual PAGA Payments within 14 days after
13 obtaining approval from the Parties. The Administrator will mail the Individual PAGA
14 Payments to all Aggrieved Employees via first class U.S. Mail along with the PAGA
15 Explanatory Letter after the Administrator conducts an NCOA search and an Accurint (or
16 substantially similar) in depth skip trace to obtain the best possible address for the PAGA
17 Employees. A true and correct copy of the PAGA Explanatory Letter is attached hereto as
18 **Exhibit 2.**

19 98. LWDA PAGA Payment. APEX will calculate and administer the LWDA
20 PAGA Payment as follows:

- 21 a) The Gross Settlement Amount will be divided by 75% to the LWDA and 25%
22 to the Aggrieved Employees.
- 23 b) The LWDA is estimated to receive approximately \$485,966.92. This amount
24 represents 75% of the GSA (i.e. \$918,750.00), less the costs of administering
25 the Settlement, and attorney's fees and costs. Specifically, the Administrator
26 will deduct the following payments from the LWDA PAGA Payment:

- 27 i. PAGA Counsel Fees. The Administrator will pay PAGA Counsel

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Attorney's Fees Payment of 1/3 of the GSA or \$408,333.33.

ii. PAGA Counsel Litigation Expenses Payment. The Administrator will deduct the actually incurred litigation costs, which total \$9,559.75.

iii. Settlement Administrator Cost. The Settlement Administrator Cost, which shall not exceed \$14,890.00.

99. Individual PAGA Payments. APEX will calculate and administer the Individual PAGA Payments. PAGA Aggrieved Employee shall be entitled to his or her pro rata share of 25% of the Gross Settlement Amount (i.e. \$306,250.00) based on the number of Qualifying Pay Periods (i.e., pay periods he or she worked during the PAGA Period). PAGA Aggrieved Employee's Individual Settlement Payment shall be calculated as follows: (Gross Settlement Amount X 25%) X (Number of PAGA Aggrieved Employee's pay periods during the PAGA Period/Total Pay Periods).

100. Escalator Clause. The Parties in good faith calculated the Qualifying PAGA Pay Periods at 44,806 from June 19, 2019, to the present. If the number of Qualifying Pay Periods worked by the PAGA Aggrieved Employees during the PAGA Period increases by more than 15%, (i.e., 51,527), Wilhelm, at its sole discretion, will either: (a) pay the pro rata percentage increase in excess of 15% of the Gross Settlement Amount to include the additional pay periods (e.g., a 16% increase in pay periods would result in a 1% increase in the GSA); or (b) reduce the PAGA Period to the date that 51,527 pay periods were met, but not exceeded.

PLAINTIFF'S COUNSEL'S VIEW OF THE SETTLEMENT

101. Based on my own independent investigation and evaluation, I am of the opinion that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair and reasonable and is in the best interests of Plaintiff, PAGA Aggrieved Employees, and the LWDA in light of all known facts and circumstances and the risks inherent in litigation. Continuing to litigate this case through trial would require significant additional time and financial resources from the Parties and their counsel, with no guarantee of any recovery for Plaintiff, the PAGA Aggrieved Employees, or the LWDA.

1 The Settlement, in contrast, commits Defendant to fund the Gross Settlement Amount
2 which will provide financial recovery, and extinguish the risks attendant with continued
3 litigation.

4 102. The Settlement was also arrived at after extensive arm's-length negotiations,
5 which considered all relevant factors, present and potential.

6 103. The Parties' settlement negotiations were contentious, hard fought,
7 exhaustive, and overseen by an experienced, well-respected mediator.

8 104. The Parties only reached the agreement after the mediator guided them
9 towards resolution and they took time to carefully consider the terms.

10 105. Although Plaintiff and I submit that Plaintiff's representative PAGA claims
11 have merit, we understand that the claims are potentially vulnerable to the defenses raised
12 by Defendant. For example, Defendant contends that a substantial fraction of the PAGA
13 Aggrieved Employees are covered by a valid collective bargaining agreement which
14 mandated that all claims for meal period and rest period violations be submitted to
15 arbitration. Defendant further contends that it provided all required meal and rest periods
16 and maintained a policy of paying required premiums throughout the relevant period.
17 Defendant further contends that they provided cool down and recovery periods, adequate
18 reporting time pay, full reimbursement for business expenses, and suitable seating. While
19 Plaintiff maintains the validity of her claims, refuting all of Defendant's defenses would
20 present additional challenges and risks at trial.

21 106. While the *Lainez* Action deemed that Plaintiff Lainez's claims were
22 preempted under the CBA and therefore his individual claims were compelled to
23 arbitration, there is still a substantial question as to whether other PAGA Aggrieved
24 Employees are also preempted.³

25 107. Further, any amount of PAGA penalties would be subject to the Court's
26 discretion to reduce an award in part or completely, if the award is deemed unjust, arbitrary,
27 ///

28 ³ Plaintiff Lainez and other "tree trimmers" signed a CBA whereas Plaintiff Hudson and other "flaggers" did not sign the CBA.

1 oppressive, or confiscatory.

2 108. This Settlement was reached after substantial investigation and discovery,
3 including informal written discovery for mediation and interviews with witnesses.

4 109. In addition, Plaintiff and I understand that she will have difficulty satisfying
5 her burden of proof on behalf of each and every PAGA Aggrieved Employee for each and
6 every pay period due to numerous disputed issues of fact and law.

7 **PLAINTIFF'S COUNSEL'S FEES AND COSTS**

8 110. The Settlement provides for Plaintiff's counsel's attorney's fees in the amount
9 of \$408,333.33. This amount was negotiated by the Parties as part of the Settlement and
10 represents a reasonable allocation of the total settlement amount in light of the substantial
11 work performed in obtaining this Settlement for Plaintiff, the State of California, and
12 PAGA Aggrieved Employees.

13 111. The Settlement further provides for Plaintiff's counsel to recover actual and
14 reasonably incurred costs advanced as part of this litigation. The actual costs incurred in
15 litigation are \$9,559.75.

16 112. My firm has interviewed Plaintiff and other PAGA Aggrieved Employees in
17 preparation for bringing the lawsuit; sought Plaintiff's employee file and reviewed and
18 analyzed the time and payroll records contained therein; prepared and served lengthy letters
19 to the LWDA and to Defendant regarding the allegations in this lawsuit; prepared and filed
20 the Opposition to Defendant's Administrative Motion to Consider Whether Cases Should
21 Be Related; drafted and filed motions, including a Motion to Remand; prepared and served
22 informal written discovery on Defendant in preparation for mediation; reviewed and
23 analyzed extensive time and pay records produced by Defendant for PAGA Aggrieved
24 Employees other than Plaintiff; reviewed and analyzed policies produced by Defendant;
25 prepared a comprehensive analysis of the damages and civil penalties attributable to the
26 claims alleged in the lawsuit; prepared for and attended a full-day mediation session; and
27 prepared the instant motion to approve the PAGA Settlement.

28 113. To date, my firm has worked over 610 hours on this matter. I further anticipate

1 that my firm will spend a minimum of five hours of additional time attending the hearing
2 on this motion and assisting with the administration of the Settlement. My firm's lodestar
3 to date is over \$300,912.00, which only includes work performed to date, and does not
4 include the time and effort counsel will incur in the future attending the approval hearing,
5 or in the administration of the PAGA Settlement. The hours spent by Plaintiff's counsel in
6 prosecuting this action, and the hours estimated to be spent in the future, were and are not
7 only reasonable but entirely necessary to achieve the excellent results obtained on behalf
8 of the Aggrieved Employees.

9 114. In setting the hourly rates for GrahamHollis, APC, my firm consulted with
10 attorneys with national reputations, experience, and law practices similar to my firm, and
11 determined that the rates we charge are reasonable for attorneys of our experience,
12 reputation, and expertise, and are consistent with the prevailing market rates for attorneys
13 and paralegals of comparable levels of experience and reputation. My firm's rates also
14 compare very favorably with rates approved by other district courts in similar class and
15 representative action litigation.

16 115. The billing rates for the lawyers and paralegals who primarily worked on this
17 case are as follows:

18	Graham Hollis/Shareholder/Admitted 1985	\$1,150
19	Vilmarie Cordero/Admitted 2006	\$1,050
20	Erik Dos Santos/Admitted 2016	\$875
21	Alyssa Smith/Provisionally Licensed 2022	\$550
22	Allison Schubert/Admitted 2022	\$550
23	Nora Steinhagen/Admitted CA 2022	\$550
24	Taylor Gee/Admitted 2023	\$475
25	Senior Paralegals	\$320
26	Paralegals	\$280
27	Case Managers	\$260
28	Law Clerks	\$260

116. These rates reflect the usual and customary rates charged by my firm for handling complex litigation such as this. Wage and hour litigation forms the vast majority of my firm's current work and we have developed a high level of skill and competence in this field of litigation. The hourly rates are fair and reasonable given the nature and complexity of this litigation and the experience level of each timekeeper.

117. My firm keeps contemporaneous time records, which I am prepare to and will submit upon request of the Court to support of Plaintiff's position that the Settlement's allocation of attorney's fees is fair and reasonable.

118. After exercising shareholder discretion in reducing some billed hours, the following summarizes the hours spent by the respective timekeepers as part of this litigation:

Timekeeper	Years	Rate	Hours	Total
Graham Hollis	39	\$1,150.00	0.7	\$805.00
Vilmarie Cordero	18	\$1,050.00	79.8	\$83,790.00
Nathan J. Reese	12	\$1,000.00	2.5	\$2,500.00
Erik Dos Santos	9	\$875.00	5.5	\$4,812.50
Monique Rodriguez	9	\$910.00	3.6	\$3,276.00
Allison Schubert	3	\$550.00	0.5	\$275.00
Nora Steinhagen	3	\$550.00	84.9	\$46,695.00
Taylor Gee	2	\$475.00	199.5	\$94,762.50
Alyssa L. Smith	-	\$550.00	0.6	\$330.00
Senior Paralegal	6+	\$320.00	20.1	\$6,432.00
Paralegal	-	\$280.00	94	\$26,320.00
Case Managers/Law Clerks	-	\$260.00	118.9	\$30,914.00
TOTAL			610.6	\$300,912.00

119. In addition, based on my experience and knowledge of the relevant legal market for wage and hour representative actions, an award of this size accurately reflects

the marketplace for similar representation of plaintiffs in wage and hour cases on a contingency basis.

120. My firm maintained the goal of achieving settlement and settlement approval in this case by reorienting a substantial proportion of its resources to reviewing and analyzing all the evidence in support of Plaintiff's claims, researching the applicable legal authority in support thereof, as well as the merits of Defendant's defenses. My firm committed and continues to commit significant financial and staffing resources to this case and anticipates having to spend additional time and resources in seeking approval of this motion as well as in assisting with administration of the Settlement.

121. My firm incurred expenses for items such as filing fees, postage, delivery, online research, telephone charges, and copying charges in order to effectively prosecute this action. These are categories of expenses which, on information and belief, I believe other law firms customarily charge their fee-paying clients.

122. The table of expenses below lists the expenses my firm incurred in the course of litigating this action as well as anticipated expenses for filing, serving, and attending the hearing on this motion:

Expense Type	Amount
Attorney Service	200
Claims Administrator	632.32
Document Imaging	1.2
DocuSign	140
Filing/Court Fees	1691.9
Mediator / Arbitration	5500
Online Research	1073.49
Postage	184.44
Print - B&W	49
Proof of Service	127.4
Grand Total	9599.75

123. In light of these considerations, my firm's requested attorneys' fees for \$408,333.33, and reimbursement for actual litigation expenses in the amount of \$9,559.75

1 is fair and reasonable. Said costs were necessarily incurred in pursuit of the Settlement.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed on April 14, 2025, in San Diego, California.

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5 /s/ Vilmarie Cordero

6 VILMARIE CORDERO
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EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This Labor Code Private Attorneys General Act ("PAGA") Settlement Agreement ("Settlement") is made by and between the State of California acting through its agent, plaintiff Naomi Hudson, ("Plaintiff") and Defendant Wilhelm, LLC ("Wilhelm"). The Settlement refers to Plaintiff and Wilhelm collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Wilhelm captioned Naomi Hudson v. Wilhelm, LLC (Northern District Court of California, Oakland Division, Case No. 24-cv-01602-YGR), initiated on December 15, 2023, pending in the Northern District Court of California, Oakland Division.

1.2. "Administrator" means Apex Class Action, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Costs" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse for its reasonable fees and expenses, not to exceed the total of the Administrator's quote of \$14,890.00 (Fourteen Thousand Eight Hundred Ninety Dollars and Zero Cents).

1.4. "Aggrieved Employee" means all of Wilhelm's current and former non-exempt employees who worked for Wilhelm in California during the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Wilhelm's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "Court" means the Northern District Court of California, Oakland Division.

1.7. "Defense Counsel" means O'Hagan Meyer LLP, including Vincent Fisher.

1.8. "Effective Date" shall mean the date the Court issues its Order approving this Settlement and entered Judgment thereon, if no objections or appeals are filed. If there are objections to the Settlement, "Effective Date" means the date when the later of the following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount and for any release to become valid and enforceable.

1.9. "Gross Settlement Amount" (GSA) means \$1,225,000 (One Million Two Hundred Fifty Thousand Dollars and Zero Cents) which is the total amount Wilhelm agrees to pay under the Settlement. The Gross Settlement Amount will include the following payments: Individual

PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Administrator's Costs.

1.10. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Qualified Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.11. "Judgment" means the Court adopting and approving the terms of this settlement agreement, entering the Final Order, and retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of this settlement agreement.

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

1.13. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i) less PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Costs.

1.14. "PAGA" means the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, et seq.).

1.15. "PAGA Counsel" means Graham Hollis, APC, including Vilmarie Cordero and Taylor M. Gee the attorneys representing the Plaintiff in the Action.

1.16. "PAGA Counsel Fees Payment" means the amount allocated to PAGA Counsel as payment for attorney's fees.

1.17. "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of its reasonable expenses incurred in the Action.

1.18. "PAGA Explanatory Letter" – means the letter the Administrator will send to the Aggrieved Employees along with the Individual PAGA Payment explaining the claims released in the Action, a copy of which is attached herein as **Exhibit A**.

1.19. "PAGA Notice" means Plaintiff's October 10, 2023 and January 31, 2025 LWDA letters to Wilhelm and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.20. "PAGA Period" means the period from June 19, 2019 to the Court's approval of this Settlement.

1.21. "Plaintiff" means Naomi Hudson, the named plaintiff in the Action.

1.22. "Qualifying Pay Period" means any payroll period in which an Aggrieved Employee actively worked (was not on vacation or leave of absence) at least one shift during the payroll period during the PAGA Period.

1.23. "Released PAGA Claims" means the claims being released by the Aggrieved Employees as described in Section 5 below.

1.24. "Released Parties" means: Wilhelm, any potential joint employer or alter ego, and any and all of Wilhelm's affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, U.S. Traffic control, LLC, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future

officers, directors, employees, or other person acting on Wilhelm's behalf) predecessors, successors, and assigns.

2. PROCEDURAL HISTORY.

2.1 On December 15, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Wilhelm for representative claims under PAGA on behalf of the State of California for violations suffered by all non-exempt employees of Wilhelm. The Complaint is the operative complaint in the Action (the "Operative Complaint.")

2.2 On February 6, 2024, Defendant filed an Answer to the Complaint. Wilhelm denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.3 On March 3, 2024, Wilhelm removed the case to the United States District Court, For the Northern District of California, and it is currently pending before [JUDGE], Case No. [case no.].

2.4 Plaintiff learned of another PAGA Action previously filed by Jose Lainez against Wilhelm as part of the documents Defendant filed with its Notice of Removal. The Lainez's PAGA Action is titled: *Jose Lainez v. Wilhelm*, N.D. Cal. Case No. 4:23-cv-00421-KAW (the *Lainez* Action).

2.5 On March 19, 2024, Wilhelm filed an Administrative Motion to determine if this Action should be considered related to the *Lainez* Action. However, on March 27, 2024, the Court denied Wilhelm's Administrative Motion and did not find the case related.

2.6 On April 12, 2024, Ms. Hudson filed a Motion to Remand to State Court. During the Initial Case Management Conference held on July 8, 2024, the Court withdrew Ms. Hudson's Motion to Remand, without prejudice. The Court requested Ms. Hudson to refile her Motion to Remand should the parties not reach a settlement at mediation.

2.7 On October 23, 2024, the Parties participated in an all-day mediation presided over by Hon. Wynne Carvill (Ret.) that led to this Settlement. The Parties intent at mediation and in this settlement agreement is to resolve all PAGA claims that were or could have been brought against Wilhelm so that settlement agreement covers all potential PAGA claims described herein. The Parties agree that Plaintiff Hudson will, if needed, submit amended LWDA notices and an amended complaint to effectuate the Parties' intent stated herein.

2.8 Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff's wage statements, Plaintiff's personnel file, Defendant's written policies, time and payroll records for a sampling of 25% of all Aggrieved Employees, dates of employment of all Aggrieved Employees, and aggregate data including the total number of current and former Aggrieved Employees, their average rate of pay, and the number of employees working at any given time during the PAGA Period.

2.9 The Parties informed the Court of their agreement to settle on November 8, 2024.

2.10 Based on its records, Wilhelm estimates that, as of December 2024, (1) there are 1,567 Aggrieved Employees who worked 44,806 Pay Periods during the PAGA Period.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by this Settlement, Wilhelm promises to pay \$1,225,000.00 (One Million Two Hundred and Twenty-Five Thousand Dollars and Zero Cents) and no more as the Gross Settlement Amount. The GSA shall be all-in with no reversion to Wilhelm. Of the Gross Settlement Amount, 25% (\$306,250) shall be allocated to the Individual PAGA Payments, and 75% (\$918,750.00 less deductions discussed in Section 3.2) shall be allocated to the LWDA PAGA Payment.

3.1.1. Escalator Clause. Wilhelm represents, based on a good faith and informed estimate and available documentation, that there are no more than 44,806 Qualifying Pay Periods during the PAGA Period. In the event the number of Qualifying Pay Periods worked by the Aggrieved Employees during the PAGA Period increases by more than 15%, (i.e., 51,527), Wilhelm, at its sole discretion, will either: (a) pay the pro rata percentage increase in excess of 15% of the Gross Settlement Amount to include the additional pay periods (e.g., a 16% increase in pay periods would result in a 1% increase in the GSA); or (b) reduce the PAGA Period to the date that 51,527 pay periods were met, but not exceeded.

3.2. Deductions to the LWDA PAGA Payment. The Administrator will make and deduct the following payments from the LWDA PAGA Payment:

3.2.1. PAGA Counsel Attorney's Fees: The Administrator will pay PAGA Counsel Fees Payment of 1/3 of the GSA, currently estimated to be \$408,333.33 (Four Hundred and Eight Thousand, Three Hundred and Thirty-Three Dollars, Thirty-Three cents) from the LWDA PAGA Payment.

3.2.2. PAGA Counsel Litigation Expenses Payment. Defendant will not oppose PAGA Counsel's requests for reimbursement of actually incurred litigation costs. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment.

3.2.3. The Administrator's Costs. The Administrator's Cost will not exceed \$14,890.00 (Fourteen Thousand Eight Hundred Ninety Dollars and Zero Cents) except for a showing of good cause and as approved by the Court. To the extent the Administration Costs are less or the Court approves payment less than \$14,890, the remainder will be allocated to the LWDA PAGA Payment.

3.3. The Administrator will allocate the remainder of the 75% of the GSA to the LWDA PAGA Payment.

3.4. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Wilhelm harmless, and indemnifies Wilhelm, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.5. Individual PAGA Payments. The Administrator will allocate 25% of the GSA to the payment of the Individual PAGA Payments, as follows:

3.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$306,250) by the total number of Qualifying Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Qualifying Pay Periods.

3.5.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms, if required under the law, for all amounts paid as penalties. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

4. SETTLEMENT ADMINISTRATION

4.1. Settlement Administrator. The Parties agree that Apex Class Action, LLC will manage the administration of this Settlement. The Parties have verified that Apex Class Action, LLC, as a condition of appointment, agrees to be bound by this Settlement and to perform, as a fiduciary, all duties specified in this Settlement in exchange for payment of the Administration Costs. The Parties and their Counsels represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

4.2. Aggrieved Employee Data. Within fifteen (15) calendar days of service on Wilhelm's counsel of record of the Court's Order of Judgment in connection with approval of this settlement and the date the Administrator provides secure file transfer instructions to Wilhelm and its Counsel (whichever is later), Wilhelm will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Settlement. Wilhelm has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Wilhelm must send the Aggrieved Employee 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 Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Wilhelm shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) calendar days after service on Wilhelm's Counsel of Record of the Court's Order of Judgment in connection with approval of this settlement.

4.4. 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.

4.5. PAGA Employees Totals. The Administrator shall have the final authority in calculating the total of the Qualified Pay Periods worked by the Aggrieved Employees during the PAGA Period.

4.5.1. If the total of Qualified Pay Periods exceeds by 15% the estimated amounts, the Administrator shall notify the Parties within 10 calendar days of receipt of the PAGA Employee Data. Wilhelm shall have ten (10) business days to decide whether to cap the PAGA Period or to make any additional settlement payments in accordance with the Escalator Clause in this Settlement.

4.5.2. Within 10 calendar days of receipt of the PAGA Employee Data, the Administrator will circulate to the Parties' counsel a spreadsheet containing the Individual PAGA Payments to each PAGA Employee and the data used to calculate said payments. The PAGA Employees, except for the Plaintiff, shall be identified by their employee id number or last four of their social security number, and whichever method is by the Administrator to identify the PAGA Employees. The Settlement Administrator shall obtain approval of the calculations from the Parties.

4.6. Payment of the LWDA PAGA Payment. Within 14 calendar days after obtaining approval from the Parties of the Individual PAGA Payments calculation, the Administrator will pay the Administration Costs, the PAGA Counsel's Fees, PAGA Counsel Litigation Expenses Payment, and the LWDA PAGA Payment.

4.7. Mailing of Individual PAGA Payments. Within 14 calendar days after obtaining approval from the Parties of the Individual PAGA Payments calculation, the Administrator will issue checks for the Individual PAGA Payments and mail the PAGA Explanatory Letter (attached hereto as Exhibit A) along with the Individual PAGA Payments to all PAGA Employees by first-class U.S. mail. Prior to mailing, the Settlement Administrator shall perform a National Change of Address (NCOA) search and an Accurant®, (or substantially similar) in-depth skip trace to obtain the best possible address for the PAGA Employee.

4.7.1. The face of each Individual PAGA Payment 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.

4.7.2. The envelope containing the Individual PAGA Payment shall bear the following phrase in bold type, in the bottom left-hand corner: **IMPORTANT-WILHELM SETTLEMENT INFORMATION. PLEASE OPEN IMMEDIATELY.**

4.8. Undeliverable checks. The Administrator shall promptly send a replacement check to any PAGA Employee whose original check was lost or misplaced, or as requested by the PAGA Employee prior to the void date.

4.8.1. If an Individual PAGA Payment is returned as undeliverable with a forwarding address provided by the United States Postal Service before the void date, the Administrator will promptly resend the Explanatory Letter and Individual PAGA Payment to that forwarding address. If any Individual PAGA Payment is returned from any mailing and/or re-mailed, the Administrator will note for its own records and notify the Parties' Counsel of the date of such re-mailings as part of a weekly status report provided to the Parties.

4.8.2. If an Individual PAGA Payment is returned as undeliverable without a forwarding address from its first mailing, the Administrator shall undertake all reasonable efforts to locate a current address, including performing an Experian (or substantially similar) in-depth skip trace or mass search on LexisNexis databases based on set criteria. If the Administrator obtains a more current address, the Settlement Administrator shall resend the Explanatory Letter and the Individual PAGA Payment to that address. No further action by the Settlement Administrator shall be required regarding undeliverable Class Notices.

4.9. Uncashed Funds. Any moneys remaining after all Individual PAGA Payments are made resulting from any returned or uncashed checks shall be sent to the California State Controller's Office in the name of the PAGA Employee.

4.10. Accounting. The Settlement Administrator will provide an accounting under oath to PAGA Counsel and Defense Counsel of the amounts paid from the Settlement prior to any final accounting hearing set by the Court, or in case no such hearing is required, no later than nine (9) months after the Individual PAGA Payments have been disbursed, or 60 (days) from the settlement checks void date, whichever is later.

5. RELEASES OF CLAIMS.

5.1. Release by Aggrieved Employees. Upon the Effective Date, subject to the Court's continuing jurisdiction to monitor compliance by Wilhelm with settlement terms, Plaintiff, the State of California, and all Aggrieved Employees will release the Released Parties from any and all civil penalties claims that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Complaint and/or the PAGA Notices, including, but not limited to, any

claims for civil penalties arising from Defendant's alleged violations of the California Labor Code, *et seq.* for, inter alia, failure to recovery periods and/or timely pay for recovery periods premiums; failure to provide compliant meal periods and/or timely pay premiums; failure to provide rest periods and/or timely pay premiums; failure to timely pay all wages, including but not limited to minimum, regular, and overtime wages (including based on allegations of pre-shift/post-shift/meal period off-the-clock work claims; rounding; auto deducted time; and regular rate of pay issues); failure to provide separate rest period compensation for nonproductive work; failure to provide accurate itemized wage statements; failure to reimburse for business expenses; and failure to pay all wages due during and upon separation of employment, and including but not limited to PAGA claims predicated on or that could have been predicated on alleged violations of Cal. Lab. Code §§ 201, 202, 203, 204, 210, 213, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and the provisions within the governing Wage Order.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

6.1. At least five (5) calendar days prior to filing, Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its quote for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Settlement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator.

6.2. Plaintiff and PAGA Counsel shall disclose in their declaration to the Court the existence of the *Lainez* Action and the fact that this Settlement will extinguish any and all civil penalties claims under PAGA alleged in that Action. Defendant and Defense counsel shall disclose in their declaration to the Court the fact that the *Lainez* Plaintiff was invited to participate in mediation and informed of the global Settlement.

6.3. PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after the full execution of this Settlement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's approval order to the Administrator.

6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting

in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Settlement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Settlement and otherwise satisfy the Court's concerns.

7. CONTINUING JURISDICTION OF THE COURT.

7.1. 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 Settlement and Judgment, (ii) addressing Settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

8. ADDITIONAL PROVISIONS.

8.1. No Admission of Liability. This Settlement represents a compromise of highly disputed claims. Nothing in this Settlement is intended or should be construed as an admission by Wilhelm that any of the allegations in the Operative Complaint have merit or that Wilhelm has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Wilhelm defenses in the Action have merit. If, for any reason the Court does not approve this Settlement, Wilhelm reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Wilhelm's defenses. The Settlement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement).

8.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Settlement, together with its attached Exhibit A, shall constitute the entire agreement between the Parties, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

8.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that Plaintiff and Wilhelm authorize them, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of the Settlement, including any amendments.

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

8.5. 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.

8.6. **Modification of Agreement.** This Settlement, 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.

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

8.8. **Applicable Law.** All terms and conditions of this Settlement and its Exhibit A will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

8.9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

8.10. **Use and Return of Aggrieved Employee Data.** Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Wilhelm in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Wilhelm unless, prior to the Administrator's payment of all Settlement Funds, Wilhelm makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

8.11. **Headings.** The descriptive heading of any section or paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement.

8.12. **Calendar Days.** Unless otherwise noted, all reference to "days" in this Settlement shall be to calendar days. In the event any date or deadline set forth in this Settlement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

8.13. **Notice.** All notices, demands or other communications between the Parties in connection with this Settlement 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:

GRAHAMHOLLIS, APC
Vilmarie Cordero,
vcordero@grahamhollis.com

Taylor M. Gee
tgee@grahamhollis.com
3555 Fifth Avenue,
San Diego, CA 92103
Telephone: 619-692-0800

To Wilhelm LLC:

O'HAGAN MEYER LLP
Joseph R. Lordan, Vincent R. Fisher, Cruz Zavala, and Eleno Gonzalez
One Embarcadero Center, Suite 2100
San Francisco, CA 94111
Telephone: 415-578-6900

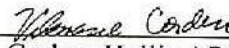
8.14. Execution in Counterparts. This Settlement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Settlement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same 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 Settlement.

Dated: 2/19/2025

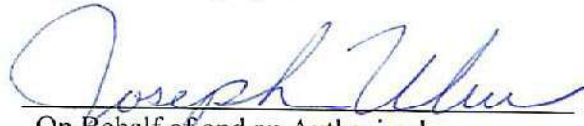
DocuSigned by:

E39072ACA628462
Naomi Hudson

Dated: 2/20/2025


GrahamHollis APC
Vilmarie Cordero
Taylor M. Gee
Attorneys for Plaintiff Naomi Hudson and
Aggrieved Employees

Dated: 2/24/2025


On Behalf of and an Authorized
Representative of Wilhelm LLC

Dated: 2.27.2025


O'HAGAN MEYER LLP
Joseph R. Lordan, Esq.
Vincent R. Fisher, Esq.
Cruz Zavala, Esq.
Eleno Gonzalez, Esq.
Attorneys for Defendant Wilhelm, LLC

EXHIBIT A

Dear [NAME]:

The enclosed check is your proportional share of the settlement payment in the California Private Attorneys General Act ("PAGA") lawsuit titled *Naomi Hudson v. Wilhelm, LLC*, Northern District Court of California, Oakland Division, Case No. 24-cv-01602-YGR. The lawsuit alleged various violations of the California Labor Code, including unpaid minimum and overtime wages; meal and rest period violations; unreimbursed expenses; and other related claims. Based on those allegations, the lawsuit sought civil penalties pursuant to the PAGA law. You are receiving this check because you worked for Wilhelm LLC and/or U.S. Traffic Control, LLC (referred to herein together as "Wilhelm") within the state of California at some point between June 19, 2019, and [approval date].

It is important to note that the court has not ruled on the merits of the claims or defenses, and the court has not ruled in favor of any of the parties. Further, Wilhelm denies all claims and allegations in the lawsuit and maintains that it did nothing wrong and that it complied with the law at all times. However, recognizing the risks and costs of maintaining the lawsuit, both parties mutually agreed to resolve and settle their disputes, and the Court has approved the settlement and release of the PAGA claims.

This settlement releases claims for civil penalties under the PAGA, but does not release other certain claims. Enclosed you will also find an IRS Form 1099 for 100% of this payment, which represents civil penalties only. Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date.

If you have any questions about this payment, contact Apex Class Action, the Settlement Administrator at (000) 000-0000. Please note that we cannot provide tax advice. If you have questions about the tax treatment of this payment, we suggest that you consult your tax advisor or accountant.

Regards,

EXHIBIT 2

Dear [NAME]:

The enclosed check is your proportional share of the settlement payment in the California Private Attorneys General Act (“PAGA”) lawsuit titled *Naomi Hudson v. Wilhelm, LLC*, Northern District Court of California, Oakland Division, Case No. 24-cv-01602-YGR. The lawsuit alleged various violations of the California Labor Code, including unpaid minimum and overtime wages; meal and rest period violations; unreimbursed expenses; and other related claims. Based on those allegations, the lawsuit sought civil penalties pursuant to the PAGA law. You are receiving this check because you worked for Wilhelm LLC and/or U.S. Traffic Control, LLC (referred to herein together as “Wilhelm”) within the state of California at some point between June 19, 2019, and [approval date].

It is important to note that the court has not ruled on the merits of the claims or defenses, and the court has not ruled in favor of any of the parties. Further, Wilhelm denies all claims and allegations in the lawsuit and maintains that it did nothing wrong and that it complied with the law at all times. However, recognizing the risks and costs of maintaining the lawsuit, both parties mutually agreed to resolve and settle their disputes, and the Court has approved the settlement and release of the PAGA claims.

This settlement releases claims for civil penalties under the PAGA, but does not release other certain claims. Enclosed you will also find an IRS Form 1099 for 100% of this payment, which represents civil penalties only. Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date.

If you have any questions about this payment, contact Apex Class Action, the Settlement Administrator at (000) 000-0000. Please note that we cannot provide tax advice. If you have questions about the tax treatment of this payment, we suggest that you consult your tax advisor or accountant.

Regards,

EXHIBIT 3

EXHIBIT 4

Appointed as Class Counsel¹ for the following wage and hour employment law cases:

United States District Court - Central District:

- *Corral v. Lifecare Solutions*, settled for \$3 million on behalf of approximately 270 class members, and Judge Olguin awarded 30% in fees.
- *Corral v. Staples the Office Super Store, LLC.*, settled for \$800,000.00 on behalf of approximately 2,289 class members, and Judge Scarsi awarded 33.33% in fees.
- *Ellis v. Pacific Bell Telephone Co.*, settled for \$3.1 million on behalf of approximately 84 class members, and Judge Carney awarded 33.3% in fees.
- *Green v. Lawrence Service Co.*, settled for \$60,000.00 on behalf of approximately 295 class members, and Judge Kronstadt awarded \$141,659.07 in fees.
- *Madera v. Universal Alloy Corporation*, settled for \$4.75 million on behalf of approximately 744 class members, and Judge Selna awarded 25% in fees.
- *Potter v. Big Tex Trailer Manufacturing, Inc.*, settled for \$972,391.68 on behalf of approximately 104 class members, and Judge Gutierrez awarded 33% in fees.
- *Rodriguez v. Old Dominion Freight Line, Inc.*, settled for \$3.4 million on behalf of approximately 76 class members, and Judge Fischer awarded 27.5% in fees.
- *Valentine v. Rehabilitation Center of Santa Monica Holding Co.*, settled for \$950,000.00 on behalf of approximately 4,560 class members, and Judge Kronstadt awarded 25% in fees.
- *Weaver v. Hallmark Marketing Corp.* settled for \$5.625 million on behalf of approximately 3,846 class members, and Judge Fairbanks awarded 33% in fees.

United States District Court – Eastern District:

- *Milburn v. Petsmart, Inc.*, settled for \$1.35 million on behalf of approximately 2,984 class members, and Judge Drozd awarded 33% in fees.
- *Osegueda v. Northern California Inalliance*, settled for \$225,000.00 on behalf of approximately 271 class members, and Judge Shubb awarded 33.33% in fees.
- *Stoddart v. Express Services, Inc.*, settled for \$10 million on behalf of approximately 145,548 class members, and Judge Mueller awarded 25% in fees.

¹ List includes cases filed by Graham Hollis, A.P.C., as well as its predecessor entities. It also includes cases where other law firms were appointed as co-class counsel.

United States District Court – Northern District:

- *Aston v. United Parcel Services, Inc.*, settled for \$490,000.00 on behalf of approximately 2,000 class members, and Judge White awarded 33.33% in fees.
- *Delatorre v. Johnson Controls, Inc.*, settled for \$2.8 million on behalf of approximately 1,441 class members, and Judge Grewal awarded 25% in fees.
- *Fong v. Regis Corporation*, settled for \$5.75 million on behalf of approximately 5,573 class members, and Judge Chhabria awarded 33% in fees.
- *Jimenez v. Menzies Aviation*, settled for \$1.25 million on behalf of 5,175 class members, and Judge Orrick awarded 33% in fees.
- *Moore v. Petsmart, Inc.*, settled for \$10 million on behalf of approximately 19,701 class members, and Judge Davila awarded 27% in fees.

United States District Court – Southern District:

- *Birch v. Office Depot, Inc.*, settled for \$14 million on behalf of approximately 16,722 class members, and Judge Sabraw awarded 40% in fees.
- *Ceron v. Flagship Facility Services, Inc.*, settled for \$2 million on behalf of approximately 6,922 class members, and Judge Sammartino awarded 30% in fees.
- *Cook v. Tiffany and Company*, settled for \$4,148,270.00 on behalf of approximately 1,584 class members, and Judge Lorenz awarded 24.8% in fees.
- *Ferguson v. Winston Retail Solutions*, settled for \$750,000.00 on behalf of approximately 660 class members, and Judge Battaglia awarded 33.33% in fees.
- *Lopez v. GAT Airline Ground Support, Inc.*, settled for \$600,000.00 on behalf of approximately 1,394 class members, and Judge Battaglia awarded 25% in fees.
- *Pool v. Ameripark, LLC*, settled for \$1.75 million on behalf of approximately 1,024 class members, and Judge Burns awarded 25% in fees.
- *Singer v. Becton Dickinson and Co.*, settled for \$1 million on behalf of approximately 266 class members, and Judge Gonzalez awarded 33.33% in fees.

Superior Court for the County of Alameda:

- *Coombes, et al. v. HR Support*, settled for \$525,000.00 on behalf of approximately 1,190 class members, and Judge Markman awarded 33.33% in fees.
- *Gray v. Moz Designs, Inc.*, settled for \$124,000.00 on behalf of approximately 33 aggrieved employees, and Judge Lee awarded 33.33% in fees.
- *Hobdy v. Landmark Event Staffing Services, Inc.*, settled for \$245,100.00 on behalf of approximately 3,671 class members, and Judge Hernandez, Jr., awarded 33.33% in fees.
- *Lee v. Sutter Bay Medical Foundation*, settled for \$995,000.00 on behalf of approximately 5,403 class members, and Judge Petrou awarded 33.33% in fees.
- *Pena v. American National Insulation, LLC.*, settled for \$883,189.09 on behalf of approximately 711 aggrieved employees, and Judge Brand awarded 33.33% in fees.
- *Roberson v. Center for the Elders' Independence*, settled for \$1.15 million on behalf of approximately 527 class members, and Judge Smith awarded 30% in fees.
- *Trento v. US Security Associates*, settled for \$6.5 million on behalf of approximately 14,700 class members, and Judge Seligman awarded 27.69% in fees.

Superior Court for the County of Contra Costa:

- *Stevenson v. Falcon Critical Care Transport*, settled for \$233,853.00 on behalf of approximately 46 class members, and Judge Goode awarded 29% in fees.

Superior Court for the County of Fresno:

- *Drake v. Midvalley Disposal, LLC* before Judge Snauffer, settled for \$150,000.00 on behalf of approximately 315 class members, and Judge McGuire awarded 28% in fees.
- *Kenner v. Oak Harbor Freight Lines, Inc.*, settled for \$1.85 million on behalf of approximately 216 class members, and Judge Snauffer awarded 27% in fees.
- *Parmelee v. Driveline Retail Merchandising, Inc.*, settled for \$1 million on behalf of approximately 1,261 class members, and Judge Kapetan awarded 33.33% in fees.

Superior Court for the County of Kern:

- *McGough v. Love's Travel Stops & Country Stores, Inc.*, settled for \$3 million on behalf of approximately 1,638 class members, and Judge Schuett awarded 33.33% in fees.

Superior Court for the County of Los Angeles:

- *Agredano v. Southwest Water Company*, settled for \$1.22 million on behalf of approximately 125 class members, and Judge Nelson awarded 33.33% in fees.
- *Calhoun v. General Petroleum Corp.*, settled for \$950,000.00 on behalf of approximately 300 class members, and Judge Dunn awarded 40% in fees.
- *Cartwright v. Envoy Air, Inc.*, settled for \$2.5 million on behalf of approximately 2,354 class members, and Judge Highberger awarded 33.33% in fees.
- *Escalante v. Urth Payroll Services, Inc.*, settled for \$625,000.00 on behalf of approximately 2,115 aggrieved employees, and Judge Traber awarded 40% in fees.
- *Fernandez v. Prime Healthcare Services, Inc.*, settled for \$145,000.00 on behalf of approximately 18 aggrieved employees, and Judge Keeny awarded 33.33% in fees.
- *Frugard v. Unified Protective Services, Inc.*, is an ongoing case which has been certified as a class action by Judge Johnson.
- *Garcia v. Menzies Aviation, Inc.*, settled for \$1 million on behalf of approximately 1,800 class members, and Judge Rosenblatt awarded 33.33% in fees.
- *Gordon v. Accountable Healthcare Staffing, Inc.*, settled for \$900,000.00 on behalf of approximately 560 class members, and Judge Buckley awarded 33.33% in fees.
- *Hendrix v. Lucky Seven Dragons, Inc.*, settled for \$225,000.00 on behalf of approximately 336 class members, and Judge Riff awarded 33.33% in fees.
- *Iskandaryan v. Casual Male Retail Group, Inc.*, settled for \$950,000.00 on behalf of approximately 716 class members, and Judge Stern awarded 33.33% in fees.
- *Jackson v. Sourcecorp BPS Inc.*, settled for \$1.875 million on behalf of approximately 481 class members, and Judge Nelson awarded 33.33% in fees.
- *Kirkpatrick v. Petco Animal Supplies Stores, Inc.*, settled for \$9.75 million on behalf of approximately 15,962 class members, and Judge Highberger awarded 33.33% in fees.
- *Lopez v Infosys Limited*, settled for \$2.72 million on behalf of approximately 4,444 class members, and Judge Bowick awarded 33.33% in fees.

- *Lucarini v. Dresser, Inc.*, settled for \$1.024 million on behalf of approximately 78 class members, and Judge Mohr awarded 39.55% in fees.
- *Magana-Mead v. LKQ Corporation*, was settled for \$1.15 million on behalf of 303 class members, and Judge Nelson awarded 33% in fees.
- *Mahoney v AT&T Corp.*, settled for \$13,894,098.62 on behalf of approximately 719 class members, and Judge Elias awarded 33.33% in fees.
- *Quinones v. Atria Management Company, LLC*, settled for \$1 million on behalf of approximately 15,027 class members, and Judge Buckley awarded 33.33% in fees.
- *Ralda v. Smart & Final Stores, LLC*, settled for \$2 million on behalf of approximately 3,104 class members, and Judge Kuhl awarded 33.33% in fees.
- *Rodriguez v. Atrium Hospitality LP*, settled for \$1,170,000.00 on behalf of approximately 1,467 class members, and Judge Seigle awarded 33.33% in fees.
- *Solaberrieta v. Baker Hughes Oilfield Operations*, settled for \$3.5 million on behalf of approximately 295 class members, and Judge Wiley awarded 33.33% in fees.
- *Taylor v. Cross Country Support Services*, settled for \$582,000.00 on behalf of 581 class members, and Judge Nelson awarded 33.33% in fees.
- *Valentine v. Rehabilitation Center of Santa Monica*, settled for \$2.050 million on behalf of 7,072 class members, and Judge Palazuelos awarded 33% in fees.
- *Valles v. Anthony, Inc.*, settled for \$2.858 million on behalf of 658 class members, and Judge Sadvig awarded 33.33% in fees.
- *Walker v. Favorite Healthcare Staffing, Inc.*, settled for \$3.65 million on behalf of approximately 7,290 class members, and Judge Iwasaki awarded 33% in fees.
- *Whittington v. Eureka Restaurant Group, LLC*, settled for \$200,000.00 on behalf of 3,883 class members, and Judge Hill awarded 33% in fees.
- *Williams v. One Legacy*, settled for \$1.2 million on behalf of approximately 145 class members, and Judge Johnson awarded 33% in fees.
- *Wright v. AMF Bowling Centers, Inc.*, settled for \$6.35 million on behalf of approximately 4,914 class members, and Judge Duffy-Lewis awarded 28% in fees.
- *Wright v. Menzies Aviation, Inc.*, was certified as a class action by Judge Weintrob and was consolidated with *Jimenez v. Menzies Aviation, Inc.* for settlement purposes.

Superior Court for the County of Orange:

- *Bernardo v. Firstelement Fuel, Inc.*, settled for \$751,000.00 on behalf of approximately 139 aggrieved employees, and Judge Claster awarded 30% in fees.
- *Chima v. Beckman Coulter, Inc.*, settled for \$225,000.00 on behalf of approximately 36 class members, and Judge Wilson awarded 35% in fees.
- *ClubCorp Wage and Hour Cases*, settled for \$6 million on behalf of approximately 3,554 class members, and Judge Claster awarded 33.33% in fees.
- *Collins v. The Stephouse Recovery, Inc.*, settled for \$1.2 million on behalf of approximately 150 class members, and Judge Claster awarded 35% in fees.
- *Duarte v. Rainbow Disposal Co., Inc.*, settled for \$1.6 million on behalf of approximately 110 class members, and Judge Andler awarded 40% in fees.
- *Flannery v. AGR Group California*, settled for \$1,324,937.00 on behalf of approximately 5,182 class members, and Judge Andler awarded 33% in fees.
- *Jenkins v. The Mentor Network, Inc.*, settled for \$1.625 million on behalf of approximately 1,050 class members, and Judge Perkins awarded 33% in fees.
- *Payton v. Atlantic Aviation Investors, Inc.*, settled for \$1 million on behalf of approximately 162 class members, and Judge Stock awarded 40% in fees.
- *Parnell v. Hart-Hanks Shoppers, Inc.*, settled for \$600,000.00 on behalf of approximately 169 class members, and Judge Andler awarded 33.33% in fees.
- *Sheehan v. Applied Medical Products*, settled for \$2.75 million on behalf of approximately 2,012 class members, and Judge Claster awarded 33.33% in fees.
- *Valenzuela v. Enver Solar, Inc.*, settled for \$575,000.00 on behalf of approximately 1,440 class members, and Judge Sanders awarded 35% in fees.

Superior Court for the County of Riverside:

- *Becerra v. Moncler USA Retail, LLC.*, settled for \$447,744.15 on behalf of approximately 169 class members, and Judge Riemer awarded 33% in fees.

- *Digiacombo v. Castelli's Ristorante*, settled for \$225,000.00 on behalf of approximately 35 class members, and Judge Waters awarded 33% in fees.
- *Leonard v. ABTTC, Inc.*, settled for \$2.5 million on behalf of approximately 336 class members, and Judge Riemer awarded 33% in fees.
- *Loudon v. DHSE, Inc.*, (Representative Action), settled for \$650,000.00 on behalf of approximately 860 aggrieved employees, and Judge Waters awarded 33.33% in fees.
- *Steepe v. Responsible Medical Solutions Corp.*, settled for \$629,147.61 on behalf of approximately 273 class members, and Judge Riemer awarded 30.6% in fees.
- *Vest v. Scher Tire, Inc.*, settled for \$3,363,396.00 on behalf of approximately 795 class members, and Judge Waters awarded 33.33% in fees.

Superior Court for the County of Sacramento:

- *Abella v. GHC OF SAC-SNF LLC*, settled for \$1.35 million on behalf of approximately 5,484 class members, and Judge Mesiwala awarded 33.33% in fees.
- *Johnson v. PMC Southwest, LLC*, settled for \$2.25 million on behalf of approximately 377 class members, and Judge Krueger awarded 33.33% in fees.
- *Mendez v. SSP America SMF, LLC*, settled for \$650,000.00 on behalf of 173 class members, and Judge Damrell awarded 35% in fees.
- *Muniz/Wine v. Sutter Valley Hospitals*, settled for \$14,250,000.00 on behalf of approximately 25,995 class members, and Judge Damrell awarded 33.33% in fees.

Superior Court for the County of San Bernardino:

- *Alvarez v. Core States, Inc.*, settled for \$530,000.00 on behalf of approximately 45 class members, and Judge Garza awarded 40% in fees.
- *Booher v. The Poma Companies*, settled for \$650,000.00 on behalf of approximately 75 class members, and Judge Plotkin awarded 44% in fees.
- *Bracy v. Speedy Cash*, settled for \$237,320.00 on behalf of approximately 222 class members, and Judge Kayashima awarded 22.69% in fees.
- *Christensen v. Heartland Express Inc. of Iowa*, settled for \$10.25 million on behalf of approximately 1,717 class members and 984 members of a FLSA collective, and Judge Cohn awarded 33.33% in fees.

- *Jeffries v. Praxair Services, Inc.*, settled for \$373,000.00 on behalf of approximately 23 class members, and Judge Garza awarded 35% in fees.
- *Malone v. Praxair, Inc.*, settled for \$900,000.00 on behalf of approximately 57 class members, and Judge Davis awarded 40% in fees.
- *McCray v. Wireless World, LLC et al.*, settled for \$1million on behalf of approximately 1,300 class members, and Judge Pacheco awarded 40% in fees.
- *Sala v. Personnel Staffing*, settled for \$40,000.00 on behalf of approximately 47 class members, and Judge Cohn awarded 40% in fees.
- *Sala v. Radial South, L.P.*, settled for \$350,000.00 on behalf of 251 class members, and Judge McCarville awarded 40% in fees.
- *Salazar v. PODS Enterprises, LLC.*, settled for \$1,360,632.00 on behalf of approximately 654 class members, and Judge Ortiz awarded 33.33% in fees.
- *Scaglione v. M.O. Dion & Sons, Inc.*, settled for \$585,000.00 on behalf of approximately 123 class members, and Judge Garza awarded 30% in fees.
- *Taylor v. Penske Logistics LLC.*, settled for \$1,455,000.00 on behalf of approximately 5,791class members, and Judge David Cohn awarded 33% in fees.

Superior Court for the County of San Diego:

- *Andrew v. Coronado Brewing Company, INC.*, settled for \$650,000.00 on behalf of approximately 635 class members, and Judge Freestone awarded 33.33% in fees.
- *Arriaga v. International Coffee & Tea*, settled for \$1.25 million on behalf of 479 class members, and Judge Bacal awarded 33.33% in fees.
- *Baker v. Select Comfort Retail Corp.*, settled for \$1.2 million on behalf of approximately 426 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Barron v Green Farms, Inc.*, settled for \$650,000.00 on behalf of approximately 154 class members, and Judge Pollak awarded 33.33% in fees.
- *Basile v. Aaron Brothers, Inc.*, settled for \$750,000.00 on behalf of approximately 2,000 and Judge Katz awarded 32.44% in fees.
- *Bergman v. BJS&T Enterprises, Inc.*, settled for \$200,000.00 on behalf of 99 class members, and Judge Frazier awarded 33.33% in fees.

- *Berry v. Sizzling Platter, LLC*, settled for \$950,000.00 on behalf of approximately 2,654 class members, and Judge Frazier awarded 33% in fees.
- *Broadnax v. Amazing Courier Express Services, LLC.*, settled for \$1.15 million on behalf of approximately 639 class members, and Judge Mangione awarded 33% in fees.
- *Carson v. Downtown San Diego Partnership Clean and Safe*, settled for \$200,000.00 on behalf of 99 aggrieved employees, and Judge Bacal awarded 33.33% in fees.
- *Chavez v. Real Time Staffing Services, Inc.*, settled for \$1.9 million on behalf of approximately 3,120 class members, and Judge Medel awarded 35% in fees.
- *Clancy v. Scripps Health*, settled for \$6.4 million on behalf of approximately 124 class members, and Judge Meyer awarded 33% in fees.
- *Costa v. Altman Specialty Plants, Inc.*, settled for \$2.4 million on behalf of approximately 4,414 class members, and Judge Hayes awarded 33.33% in fees.
- *Dadafshar v. KT Hotels, LLC, dba Pendry Hotel*, settled for \$515,000.00 on behalf of 892 class members, and Judge Pollack awarded 33.3% in fees.
- *De La Rosa v. Quten Research Institute, LLC*, settled for \$450,000.00 on behalf of approximately 402 class members, and Judge Meyer awarded 33.33% in fees.
- *Demers v. Hotcakes No. 3, Inc.*, settled for \$150,000.00 on behalf of approximately 300 class members, and Judge Nevitt awarded 33% in fees.
- *Dew v. Minegar Contracting, Inc.*, settled for \$525,150.00 on behalf of approximately 270 class members, and the Judge Sturgeon awarded 35% in fees.
- *Downey v. Sears Roebuck and Co. (Representative Action)*, settled for \$875,000.00 on behalf of approximately 1,200 aggrieved employees, and Judge Sturgeon awarded 33.33% in fees.
- *Escoto-Miranda v. Evans Tire & Service Centers, Inc.*, settled for \$800,000.00 on behalf of approximately 450 class members, and Judge Strauss awarded 33% in fees.
- *Falcon v. Flight Suits, Inc.*, settled for \$450,000.00 on behalf of approximately 101 class members, and Judge Denton awarded 33.33% in fees.
- *Fay v Cement Cutting, Inc.*, settled for \$720,000.00 on behalf of approximately 376 class members, and Judge Bacal awarded 33.33% in fees.
- *Fennessey v. Round Table Pizza, Inc.*, settled for \$2.125 million on behalf of approximately 16,333 class members, and Judge Lewis awarded 28% in fees.

- *Frayre v. United Parcel Services Supply Chain Services, Inc.*, settled for \$494,000.00 on behalf of approximately 55 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Garcia v. Task Ventures, LLC*, settled for \$822,856.50 on behalf of approximately 2,700 class members, and Judge Wohlfeil awarded 40% in fees.
- *Geilenfeldt v. EDF Renewable Energy, Inc.*, settled for \$2.5 million on behalf of approximately 144 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Gonzalez v. Coronado Yacht Club*, settled for \$330,000.00 on behalf of approximately 193 class members, and Judge Mangione awarded 33.33% in fees.
- *Headley v. Professional Maintenance Systems, Inc.*, settled for \$3.15 million on behalf of approximately 3,851 class members, and Judge Frazier awarded 30% in fees.
- *Huerta v. Venture Petroleum Company, Inc.*, settled for \$300,000.00 on behalf of approximately 513 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Irmen v. Raphael's Party Rentals*, settled for \$1 million on behalf of approximately 845 class members, and Judge Lewis awarded 40% in fees.
- *Johnson v. The SoCo Group, Inc.*, settled for \$895,000.00 on behalf of approximately 218 class members, and Judge Lewis awarded 33.33% in fees.
- *Julio v. L&M Tire Company, Inc.*, settled for \$1.85 million on behalf of approximately 1,087 class members, and Judge Barton awarded 33% in fees.
- *Lopez v. Struc Steel, Inc.*, settled for \$55,000.00 on behalf of approximately 30 aggrieved employees, and Judge Joel R. Wohlfeil awarded 35% in fees.
- *Loveless v ASM Affiliates*, settled for \$750,000.00 on behalf of approximately 276 class members, and Judge Styn awarded 33.33% in fees.
- *Maasrani v. International Hotel Associates No. 11 LLC*, settled for \$540,000.00 on behalf of approximately 140 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Madriz v. North County Ford, Inc.*, settled for \$188,000.00 on behalf of approximately 45 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Malveda v. Providien LLC*, settled for \$5,500,000.00 on behalf of approximately 1099 class members, and Judge McLaughlin awarded 35% in fees.
- *Mandell v. Diversified Communications Services, Inc. (Representative Action)*, settled for \$50,000.00 on behalf of approximately 55 aggrieved employees, and Judge Frazier approved 33.33% in fees.

- *Martinez v. San Diego Auto Scrubber, Inc.*, settled for \$500,000.00 on behalf of approximately 148 class members, and Judge Hayes awarded 33.33% in fees.
- *Morales v. Sony Electronics, Inc.*, settled for \$450,100.00 on behalf of approximately 4,742 class members, and Judge Styn awarded 65.82% in fees.
- *Moreno v. Providence Group, Inc.*, settled for \$775,000.00 on behalf of approximately 486 class members, and Judge Frazier awarded 30% in fees.
- *Nathan v. OS Restaurant Services, LLC*, settled for \$450,000.00 on behalf of approximately 748 class members and aggrieved employees, and Judge Keri Kats awarded 33% in fees.
- *Parvizi v. Classic Residence Management, LP*, settled for \$1 million on behalf of approximately 1,409 class members, and Judge Wohlfeil awarded 33.33% in fees.
- *Pham v. George's at the Cove, Inc. dba George's at the Cove #4032*, settled for \$340,000.00 on behalf of approximately 519 class members, and Judge Bacal awarded 33.33% in fees.
- *Pina v. Paradise Wings Enterprise*, settled for \$150,000.00 on behalf of approximately 248 class members, and Judge Taylor awarded 33.33% in fees.
- *Robles v. Jetro Holdings, LLC.*, settled for \$4,100,000.00 on behalf of approximately 6,183 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Sanchez v. Evans Tire and Service Centers, Inc.*, settled for \$750,000.00 on behalf of approximately 401 class members, and Judge Sturgeon awarded 33.33% in fees.
- *Serrano v KSL Corona, L.P.*, settled \$325,000.00 on behalf of approximately 261 aggrieved employees, and Judge Meyer awarded 33.33% in fees.
- *Solis v. Check Agencies of California, Inc.*, settled for \$475,000.00 on behalf of approximately 559 class members, and Judge Taylor awarded 35% in fees.
- *Spriggs v. Ortiz Corporation*, settled for \$300,000.00 on behalf of approximately 198 class members, and Judge Katz awarded 33.33% in fees.
- *Thompson v. LawInfo.com, Inc.*, settled for \$150,000.00 on behalf of approximately 115 class members, and Judge Enright awarded 33.33% in fees.
- *Twombly v. Del Frisco's*, settled for \$950,000.00 on behalf of approximately 1,800 aggrieved employees, and Judge Sturgeon awarded 33.33% in fees.
- *Uriostegui v. Pacific Drive-Ins, LLC.*, settled for \$590,000.00 on behalf of approximately 2,645 class members, and Judge Caietti awarded 33.33% in fees.

- *Vega v. Scoobeez*, settled for \$2,512,390.91 on behalf of approximately 5,271 class members, and Judge Whitney awarded 33.33% in fees.
- *Well v. Hooters of America, Inc.*, settled for \$1.35 million on behalf of approximately 2,300 class members, and Judge Wohlfeil awarded 35% in fees.
- *Zamorano v. Piperin Corporation*, settled for \$121,887.00 on behalf of approximately 51 class members, and Judge Pollack awarded 33.33% in fees.

Superior Court for the County of San Francisco:

- *Casas v. Pacific Bell Telephone Co.*, settled for \$6 million on behalf of approximately 464 class members, and Judge Goldsmith awarded 23% in fees.
- *Simpkins v. GPS Consumer Direct, Inc.*, settled for \$1.6 million on behalf of approximately 3,295 class members, and Judge Cheng awarded 33.33% in fees.

Superior Court for the County of San Joaquin:

- *Tunchez/Cooper v. Thomas Cuisine Management, LLC.*, settled for \$3,350,000.00 on behalf of approximately 1,783 class members, and Judge Lee awarded 33.33% in fees.

Superior Court for the County of San Luis Obispo:

- *Hernandez v. All Ways Clean* (Representative Action), settled for \$205,000.00 on behalf of approximately 642 aggrieved employees, and Judge Coates granted 35% in fees.
- *Martinez v. Zoo Med Laboratories*, settled for \$600,000.00 on behalf of approximately 330 aggrieved employees, and Judge Coates awarded 33% in fees.

Superior Court for the County of Santa Barbara:

- *Ramirez v Baker Hughes Oilfield Operations* (*Baker Hughes Wage and Hour Cases*), settled for \$2.75 million on behalf of 165 class members, and Judge Anderle awarded 33.33% in fees.

Superior Court for the County of Santa Clara:

- *Adami v. Prime Now LLC.*, settled for \$4.3 million on behalf of 44,172 class members, and Judge Zayner awarded 33.33% in fees.

- *Allison v. Super Zen, Inc.*, settled for \$235,300.00 on behalf of approximately 26 class members, and Judge Lucas awarded 33.33% in fees.
- *Edwards v. Absolute Senior Solutions, et al.*, settled for \$244,000.00 on behalf of approximately 134 aggrieved employees, and Judge Zayner awarded 33.33% in fees.
- *Hefner v. Solary, LLC.*, settled for \$750,000.00 on behalf of approximately 67 class members, and Judge Kulkarni awarded 33.33% in fees.
- *Ledbetter v. Entrepreneurial Ventures, Inc.*, settled for \$1.8 million on behalf of approximately 754 class members, and Judge Overton awarded 33.33% in fees.
- *Letuligasenoa v. International Paper Company*, settled for \$4.5 million on behalf of approximately 3,786 class members, and Judge Errand awarded 33.33% in fees with a 1.47 multiplier.
- *Suarez v. First Alarm Security & Patrol, Inc.*, settled for \$7.25 million on behalf of approximately 3,786 class members, and Judge Walsh awarded 33.33% in fees.
- *Subia v. National Securities Industries, Inc.*, settled for \$275,000.00 on behalf of approximately 187 class members, and Judge Lucas awarded 30% in fees.

Superior Court for the County of Solano:

- *Apodaca v. Randstad US, LLC.*, settled for \$275,000.00 on behalf of approximately 675 aggrieved employees, and Judge Gizzi awarded 33.33% in fees.
- *O'Neal v. Old Navy, LLC.*, settled for \$2.5 million on behalf of approximately 22,652 class members, and Judge Jones awarded 25% in fees.
- *Roberson v. Ghiringhelli Specialty Foods*, settled for \$375,000.00 on behalf of approximately 1,324 aggrieved employees, and Judge Getty awarded 33.33% in fees.
- *Saechao v. Pla-Fit Franchise d.b.a. Planet Fitness*, settled for \$325,000.00 on behalf of approximately 149 class members, and Judge Mattice awarded 25% in fees.
- *Stafford v. Dollar Tree Stores, Inc.*, settled for \$4.6 million on behalf of approximately 7,737 class members, and Judge Beeman awarded 33.33% in fees.
- *Stoddart v. Heavy Metal Iron, Inc.*, settled for \$150,000.00 on behalf of approximately 17 aggrieved employees, and the Judge Carringer awarded 25% in fees.
- *Turnage v. Park Management Corporation*, settled for \$400,000.00 on behalf of approximately 214 class members, and Judge Daniels awarded 33.33% in fees.

Superior Court for the County of Tulare:

- *Lopez v. Ruiz Food Products, Inc.*, settled for \$547,500.00 on behalf of approximately 2,233 class members, and Judge Hillman awarded 33% in fees.

Superior Court for the County of Ventura:

- *Jackson v. Vulcan Materials Co.*, settled for \$800,000.00 on behalf of approximately 103 class members, and Judge Bysshe awarded 37.5% in fees.
- *Laux v. Van Nuys Skyways, Inc.*, settled for \$800,000.00 on behalf of approximately 70 class members, and Judge Riley awarded 35% in fees.

EXHIBIT 5

April 7, 2025

Attorneys at Law

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San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Taylor M. Gee
tgee@grahamhollis.com
619.930.9601 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Wilhelm, LLC
11990 Heritage Oak Place, Suite 3
Auburn, CA 95603

Wilhelm, LLC
c/o Cogency Global Inc., Agent for Service of
Process
1325 J Street Suite 1550
Sacramento, CA 95814

U.S. Traffic Control LLC
573 Hawthorne Ave
Athen, GA 30606

U.S. Traffic Control, LLC
c/o Cogency Global Inc., Agent for Service of
Process
1325 J Street Suite 1550
Sacramento, CA 95814

**Re: Naomi Hudson's Second Amended Notice of Wage and Hour Claims
Against Wilhelm, LLC and U.S. Traffic Control LLC
LWDA-CM-986825-23**

Dear Labor and Workforce Development Agency and Wilhelm, LLC, and U.S. Traffic Control LLC:

This letter shall serve as Naomi Hudson's ("Claimant") second amended written notice to the California Labor and Workforce Development Agency ("LWDA"), Wilhelm, LLC, and U.S. Traffic Control LLC ("the Companies") of additional facts and theories that support the alleged Labor Code violations previously alleged. Claimant

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson*

Nathan Reese

Allison Schubert

Alex Kuner

Dawn M. Berry

Taylor M. Gee

Samara Bahu

Ommar Chavez

Monique R. Rodriguez

Licensed to Practice in CA and WA

provides this notice in accordance with the Private Attorneys General Act of 2004. (codified in Labor Code § 2698 *et seq.*, “PAGA”), Labor Code § 2699.3 *et seq.* Claimant desires to amend her civil action to enforce her rights under the Labor Code and seek compensation accordingly.

Claimant incorporated by reference all of the factual allegations and legal theories asserted in the initial written notice dated October 10, 2023, as well as the first amended notice dated January 31, 2025, as if stated herein. A copy of the October 10, 2023, initial notice is attached hereto as **Exhibit A**, while the first amended notice dated January 31, 2025, is attached as **Exhibit B**. Please be advised that Claimant amends her initial written notice, dated October 10, 2023, and her first amended notice dated January 31, 2025, to include additional allegations and theories of liabilities for the same Labor Code violations that Claimant set forth in the two previous notice letters identified above.

ADDITIONAL FACTUAL ALLEGATIONS

The Companies denied Claimant, and on information and belief, other Aggrieved Employees in California specific rights afforded to them under the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order, as described in detail in the October 10, 2023, and January 31, 2025 notice letters.

The Companies provided Claimant, and on information and belief other Aggrieved Employees, bonuses and other discretionary and non-discretionary compensation in addition to their regular rate of pay. On information and belief, some of the bonuses the Companies paid Claimant and other non-exempt employees were not factored as compensation when calculating Aggrieved Employees regular rate of pay. As such, the Companies failed to calculate the correct regular rate of pay for overtime premiums, meal premiums, and rest premiums. For example, Claimant received a March 2022 bonus of \$1,330.62. Claimant’s bonus was not included in her regular rate for purposes of calculating her regular rate of pay for overtime, meal, and rest premiums.

In addition, the Companies had the illegal policy of failing to pay Claimant and, on information and belief, other Aggrieved Employees, for work performed. Through investigation, the Companies maintained a practice and policy of rounding time punches of Claimant and other Aggrieved Employees to the nearest quarter of an hour. As such, the Companies maintained a timekeeping system that captures exact time but elected to round Aggrieved Employees’ time which resulted in employees not receiving all minimum, regular, and overtime wages for all hours worked. Furthermore, upon information and belief, the Companies maintained a practice of employees, and other Aggrieved Employees, performing work before clocking in and/or after clocking out which resulted in employees, and Aggrieved Employees, not receiving all minimum, regular, and overtime wages for all hours worked.

On information and belief, these policies and practices of the Companies applies to all other Aggrieved Employees, and results in Claimant and other Aggrieved Employees not being paid all minimum, regular, and overtime wages owed. Claimant will pursue all available remedies for the Companies’ violations on behalf of herself and other current and former Aggrieved Employees to the extent permitted by law.

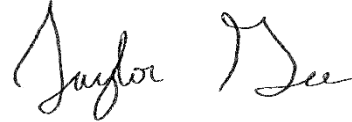
Additionally, the Companies failure to include bonuses in the regular rate, rounding time policies, and practice of employees performing work before clocking in and/or clocking out further contributed to

the Companies' failure to timely pay all wages due during and upon termination of employment pursuant to Labor Code Section 204.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to her or other losses incurred by her or by any other Aggrieved Employee of the Companies, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in her complaint.

Very truly yours,



Taylor M. Gee

EXHIBIT A

October 10, 2023

Attorneys at Law

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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Wilhelm, LLC
11990 Heritage Oak Place, Suite 3
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Wilhelm, LLC
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Sacramento, CA 95814

U.S. Traffic Control LLC
573 Hawthorne Ave
Athen, GA 30606

U.S. Traffic Control, LLC
c/o Cogency Global Inc., Agent for Service of
Process
1325 J Street Suite 1550
Sacramento, CA 95814

Re: Naomi Hudson's Wage and Hour Claims Against Wilhelm, LLC and U.S.
Traffic Control LLC

Dear Labor and Workforce Development Agency and Wilhelm, LLC and U.S. Traffic
Control LLC.:

Please be advised that Naomi Hudson ("Claimant") has retained our firm to
represent her for claims against her former employers Wilhelm, LLC and U.S. Traffic
Control LLC ("the Companies").

Graham S.P. Hollis

Vilmarie Cordero

Hali Anderson

Nathan Reese

Erik Dos Santos

Nora Steinhagen

Alyssa Smith

Allison Schubert

Alex Kuner

Dawn M. Berry

Brisa Martinez

Taylor M. Gee

*Provisionally Licensed Lawyer

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Companies of the alleged Labor Code violations Claimants claim that the Companies committed against them and all other aggrieved employees in California. Claimants provide this notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2699.3. Claimants desire to file a civil action to enforce their rights under the Labor Code and seek compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent all other current and former non-exempt employees who performed work for the Companies in California and who have suffered at least one of the wage and hour violations described herein during the relevant time period (hereinafter collectively "aggrieved employees").

FACTUAL BACKGROUND

The Companies are limited liability companies in California. The Companies operates throughout central California. Claimant worked for the Companies as a flagger throughout Santa Rosa, California and the surrounding areas. Claimant worked for the Companies from January 2022 until she was terminated in July 2023. Claimant was paid an hourly rate of \$29.00. At all times, Claimant was a non-exempt employee and was compensated on an hourly basis.

The Companies denied Claimant and other aggrieved employees in California specific rights afforded to them under the California Labor Code and the IWC Wage Order. For example, the Companies failed to provide them with legally compliant meal and rest periods or pay them meal and rest period premiums, failed to timely pay them all minimum, regular, and overtime wages owed, failed to reimburse for all business expenses, failed to pay for reporting time, failed to provide recovery periods when the temperature in the work area exceeded 80 degrees Fahrenheit, failed to maintain accurate records and issue accurate itemized wage statements, and failed to timely pay all wages due during and upon separation of employment.

The Companies did not provide Claimant and, on information and belief, other aggrieved employees the opportunity to take compliant 30-minute, off-duty meal periods. Rather, the Companies required Claimant and, on information and belief, other aggrieved employees to work through their meal periods, receive less than thirty (30) minute meal periods, take interrupted meal periods, or did not allow them to take meal periods before the end of the fifth hour. For example, Claimant and, on information and belief, other aggrieved employees regularly took their meal periods after the end of the fifth hour of work because they had to work around their schedule and guard rigs and equipment as they were not permitted to leave during that time. Claimant and, on information and belief, other aggrieved employees were also required to remain on-duty as they have to direct traffic at all times and are usually scheduled without any relief of their job duties. Furthermore, the Companies, on information and belief, further did not authorize or permit a second meal period when Claimant, and aggrieved employees worked shifts longer than 10 hours. The Companies will automatically deduct time for a meal period regardless of whether Claimant and, on information and belief, other aggrieved employees took meal periods.

Although Claimant and, on information and belief, other aggrieved employees did not receive legally compliant meal periods, the Companies did not pay Claimant and other aggrieved employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code section 226.7

and the applicable IWC Wage Order. In fact, the Companies never compensated Claimant and, on information and belief, other aggrieved employees an additional hour of pay at the employee's regular rate of pay for each work period during which a meal period was not provided, as required under California law. As such, the Companies owes Claimant and other aggrieved employees a meal period premium for each work day that Claimant and other aggrieved employees were not provided with a compliant meal period.

For the same reasons as meal breaks, the Companies also did not authorize or permit Claimant and, on information and belief, other aggrieved employees to take ten-minute, uninterrupted rest periods every four hours worked or major fraction thereof at any time during the course of their employment. Despite the fact that Claimant and, on information and belief, other aggrieved employees did not receive off-duty rest periods, the Companies did not pay Claimant the additional one hour pay at the employee's regular rate of pay as required under Labor Code section 226.7 and the applicable IWC Wage Order. In fact, the Companies never compensated Claimant, and on information and belief, other aggrieved employees an additional hour of pay at the employee's regular rate of pay for each work period during which a rest period was not provided every four hours, or major fraction thereof, as required under California law.

Further, Claimant and, on information and belief, other aggrieved employees were not paid all minimum, regular, and overtime wages because the Companies failed to record the actual start and end time of Claimant and, on information and belief, other aggrieved employees' shifts and meal periods. Instead, the Companies had the illegal policy of paying Claimant and, on information and belief, other aggrieved employees, only for their scheduled work hours and auto-deducted time for their meal periods regardless of whether they actually received meal periods. The Companies also alter the time records of Claimant and, on information and belief, other aggrieved employees to change the total number of hours worked for that day to avoid paying overtime. Thus, Claimant and, on information and belief, other aggrieved employees, were not paid all minimum, regular, and overtime wages for all hours worked.

Claimant and, on information and belief, other aggrieved employees are also not paid for reporting time pay. On at least on occasion, Claimant was told to drive 2.5 hours to a job site to perform work. However, once Claimant showed up at the job site, she was informed that she was no longer needed. However, the Companies failed to pay Claimant reporting time pay for this day worked.

The Companies failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods, as the Companies did not provide them off-duty access to adequate shade when the outdoor temperature at the worksites exceeded 80 degrees Fahrenheit and did not provide cold water, as employees had to provide their own water and are required to work in the street at all times where there is no shade. The Companies never notified Claimant and, on information and belief, other aggrieved employees that they were entitled to recovery periods, nor did the Companies ever offer recovery periods to Claimant and, on information and belief, other aggrieved employees. The Companies also failed to pay Claimant and, on information and belief, other aggrieved employees an additional hour of pay when they were not provided with compliant recovery periods.

The Companies also failed to reimburse Claimant and, on information and belief, other aggrieved employees for all necessary expenses that were incurred in the discharge of their job duties. For example, Claimant and, on information and belief, other aggrieved employees were required to use their own cell phones to perform work duties and clock in and out. But, Claimant and, on information and belief, other aggrieved employees did not receive any reimbursement for this. Additionally, on at least one occasion,

Claimant was required to purchase her own hotel room to stay three nights for a job, but was not reimbursed by the Companies.

The Companies also failed to provide adequate seating and restrooms to Claimant and aggrieved employees. Because employees were required to remain on the street, they did not have access to bathrooms or seating. Often, Claimant would have to go into the forest to use the restroom as the Companies do not provide any form of restrooms.

The Companies further failed to maintain accurate records reflecting all of Claimants' and other aggrieved employees' time worked and wages paid, in violation of California law. For example, the Companies failed to record the actual start and end time of Claimant and, on information and belief, other aggrieved employees' work periods and break periods. In addition, the Companies had the illegal policy of failing to pay Claimant and, on information and belief, other aggrieved employees, for work performed. In addition, the Companies auto-deducted meal period regardless of whether or not the employees had taken a compliant and off-duty meal period.

In addition, the Companies failed to accurately keep all the information required under Labor Code section 226(a). The wage statements issued by the Companies also did not include all the required items provided for in Labor Code section 226. For example, the wage statements issued by the Companies did not include the correct amount of gross and net wages earned, the correct total hours worked by the employee, the applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each applicable hourly rate by the employee as required under Labor Code section 226.

Lastly, as a direct result of the aforementioned Labor Code violations, the Companies did not pay Claimant and, on information and belief, other aggrieved employees all wages due and payable during and upon separation of employment, including minimum, regular, and overtime wages for all hours worked, and meal, rest, and recovery period premium wages, as required pursuant to Labor Code sections 201, 202 and 204.

Due to the foregoing Labor Code violations, the Companies denied Claimant and other aggrieved employees certain rights afforded them under the California Labor Code and IWC Wage Orders. Claimant makes these claims against the Companies on behalf of herself and all other aggrieved current and former employees of the Companies in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198 and the "Minimum Wages" and "Hours and Days of Work" sections of the Applicable IWC Wage Order)

Labor Code section 1197 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." Labor Code section 1197.1 provides that, "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203..." Section 1198 states, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the

maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 510 states, “[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements.

Labor Code section 1194(a) states, “...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.” Liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon are provided for under Labor Code section 1194.2.

Labor Code section 223 states, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Labor Code section 225.5 provides that, “...every person who unlawfully withholds wages due any employee in violation of Section ...223 shall be subject to a civil penalty” of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Companies failed to pay Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, as required by law. Claimant will pursue all available remedies for the Companies’ violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND
AUTHORIZE AND PERMIT REST PERIODS**

(Labor Code sections 226.7, 512, 558, 1198 and the “Meal Periods” and
“Rest Periods” sections of the Applicable IWC Wage Order)

Labor Code section 226.7(b) states, “[a]n employer shall not require an employee to work during a meal or rest . . . period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission...” Labor Code section 226.7(c) states, “[i]f an employer fails to provide an employee a meal or rest . . . period in accordance with a state law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest . . . period is not provided.”

Labor Code section 512(a) states, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30

minutes” and “[a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” It further states, “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.” Furthermore, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job meal period is agreed to and complies with Labor Code Section 512.

The “Rest Periods” section of the applicable IWC Wage Order states, “[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof.” Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” The Wage Order further states, “[r]est periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same period.”

Labor Code section 1198 states, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As set forth above, the Companies failed to provide Claimant and, on information and belief, other aggrieved employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work, did not authorize or permit a second off-duty meal periods for shifts in excess for 10 hours, and did not authorize and permit Claimant and, on information and belief, other aggrieved employees to take legally compliant rest periods, as required by California law. The

Companies failed to pay Claimant and, on information and belief, other aggrieved employees one-hour of premium wages for each day a compliant meal period was not provided and one-hour of premium wages for each day a compliant rest period was not authorized or permitted. Claimant will pursue all available remedies for the Companies' violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(Labor Code section 2802 and the "Uniforms and Equipment" section
of the Applicable IWC Wage Order)

Labor Code section 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code section 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Companies failed to reimburse Claimant and, on information and belief, other aggrieved employees all necessary business expenses. Claimant will pursue all available remedies for the Companies' violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE RECOVERY PERIODS
(Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395)

Labor Code section 226.7(a) states that, "'recovery period' means a cooldown period afforded an employee to prevent heat illness." Labor Code section 226.7(b) states that, "[a]n employer shall not require an employee to work during a ... recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational and Health Standards Board, or the Division of Occupational Safety and Health." Labor Code section 226.7(c) states that "[i]f an employer fails to provide an employee a ... recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the ... recovery period is not provided."

California Code of Regulations, Title 8, Section 3395(d)(1) provides that, “[s]hade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling ... [t]he shade shall be located as close as practicable to the areas where the employees are working.”

As set forth above, the Companies failed to provide Claimant and, on information and belief, other aggrieved employees with compliant recovery periods because it did not provide them off-duty access to shade when the outdoor temperature at the worksite exceeded 80 degrees Fahrenheit. The Companies also failed to pay Claimant and, on information and belief, other aggrieved employees an additional hour of pay when they were not provided with compliant recovery periods. Claimant will pursue all available remedies for the Companies’ violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PAY REPORTING TIME PAY

(Labor Code § § 1194, 1198, 1199, and the “Reporting Time Pay” section of the IWC Wage Order No. 5-2001)

The “Reporting Time Pay” section of IWC Wage Order No. 5-2001 states:

“[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

Labor Code § 1199 makes it unlawful for any employer “or other person acting either individually or as an officer, agent, or employee of another person” to require or cause “any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission,” pay or cause “to be paid to any employee a wage less than the minimum fixed by an order of the commission” or violate or refuse or neglect “to comply with any provision of this chapter or any order or ruling of the commission.”

As set forth above, the Company failed to pay Claimants and, on information and belief, other aggrieved employees the required amount of reporting time pay for the time they reported to work but were not put to work, as required by California law. Claimants will pursue all available remedies for the Company’s violations on behalf of herself and other aggrieved employees to the extent allowed by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code sections 1174, 1174.5, 1198, and the “Records” section of the Applicable IWC Wage Order)

Labor Code section 1174 states, “[e]very person employing labor in this state shall... [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ..., employees employed at the respective plants or establishments.”

The “Records” section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period and meal period, total hours worked in the payroll period and applicable rates of pay, and total wages paid each payroll period.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Companies violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Companies’ failure to record the proper beginning and end of each work period, the meal periods, the applicable rates of pay, the total hours worked during the pay period, and the total wages paid each payroll period. Claimant will pursue all available remedies for the Companies’ violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code sections 226, 226.3, 246, 248.5, and 1198)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing: “(1) gross wages earned, (2) total hours worked by the employee, ..., (5) net wages earned, ..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and entitles an employee to an award of costs and reasonable attorney’s fees. Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code section 246(i) states that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Labor Code section 248.5(e) provides that “any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorneys’ fees and costs.”

The Companies failed to provide Claimant and, on information and belief, other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not include the correct total regular hours worked, the correct amount of gross and net wages earned, the correct overtime hours worked, and all applicable hourly rates

and the corresponding number of hours worked at each hourly rate, as required under Labor Code section 226. The Companies also failed to include the accrued sick hours on Claimant and, on information and belief, aggrieved employees' wage statements as required by Labor Code section 246(i). Claimant will pursue all available remedies for the Companies' violations on behalf of himself and other aggrieved employees to the extent allowed by law.

FAILURE TO TIMELY PAY ALL WAGES DUE

(Labor Code sections 201, 202, 203, 204, 210, 1194, 1194.2, 1198, and the
"Minimum Wages" section of the Applicable IWC Wage Order)

Labor Code section 204(a) states in pertinent part, "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Furthermore, Labor Code section 204(b)(1) states, "all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period." The requirements of Labor Code section 204 are "deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Labor Code section 204(d). Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation. The "Minimum Wages" section of the applicable IWC Wage Order also states that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203(a) states, in pertinent part, "[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days."

Here, the Companies routinely failed to pay Claimant and, on information and belief, other aggrieved employees all overtime wages owed within a timely manner. The Companies routinely paid Claimant and, on information and belief, other aggrieved employees their overtime wages months after the overtime wages had accrued.

As set forth above, the Companies further violated this Labor Code section by not paying to Claimant and, on information and belief, other aggrieved employees all minimum, regular, and overtime wages, as well as meal, rest, and recovery period premium wages, within the required time during and upon

separation of their employment. As a result of the Companies' failure to comply with the aforementioned Labor Code provisions, the Companies owes waiting time penalties to Claimant and, on information and belief, other aggrieved employees, which they have not yet paid. Claimant will pursue all available remedies for the Companies' violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code sections 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or any person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558.1) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: "[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."

Labor Code section 558.1(a) states, "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." This includes the owners, officers, directors, or managing agents of the employer. Labor Code section 558.1(b).

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: "(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

As set forth above, the Companies underpaid Claimant and, on information and belief, aggrieved employees and violated the Labor Code and the applicable IWC Wage Order by failing to pay them all regular, minimum, and overtime wages, meal, rest, and recovery period premium wages, and business expense reimbursements, as required under Labor Code sections 203, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and the applicable sections of the applicable IWC Wage Order. As a result, the Companies is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1. Claimant will pursue all

available remedies for the Companies' violations on behalf of herself and other aggrieved current and former employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e),
558, 1194, 1194.2, 1197.1, 2802, and 2699, et seq.)

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2699, et seq., among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699, et seq., an aggrieved employee is entitled to 25% of the penalty assessment, which is \$100 for the first violation and \$200 for each subsequent violation. Accordingly, the Companies is liable for these items in addition to the unpaid wages. Claimant has already incurred actual damages, costs and attorney's fees and they will continue to incur costs as a result of the Companies' unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to her or other losses incurred by her or by any other aggrieved employee of the Companies, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in his complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Erik Dos Santos', with a stylized flourish at the end.

Erik Dos Santos

EXHIBIT B

January 31, 2025

Attorneys at Law

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Ommar Chavez

Monique R. Rodriguez

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Wilhelm, LLC
11990 Heritage Oak Place, Suite 3
Auburn, CA 95603

Wilhelm, LLC
c/o Cogency Global Inc., Agent for Service of
Process
1325 J Street Suite 1550
Sacramento, CA 95814

U.S. Traffic Control LLC
573 Hawthorne Ave
Athen, GA 30606

U.S. Traffic Control, LLC
c/o Cogency Global Inc., Agent for Service of
Process
1325 J Street Suite 1550
Sacramento, CA 95814

**Re: Naomi Hudson's Amended Notice of Wage and Hour Claims Against
Wilhelm, LLC and U.S. Traffic Control LLC
LWDA-CM-986825-23**

Dear Labor and Workforce Development Agency and Wilhelm, LLC, and U.S. Traffic Control LLC.:

This letter shall serve as Naomi Hudson's ("Claimant") first amended written notice to the California Labor and Workforce Development Agency ("LWDA"), Wilhelm, LLC, and U.S. Traffic Control LLC ("the Companies") of additional facts and theories that support the alleged Labor Code violations previously alleged. Claimant

provides this notice in accordance with the Private Attorneys General Act of 2004. (codified in Labor Code § 2698 *et seq.*, “PAGA”), Labor Code § 2699.3 *et seq.* Claimant desires to amend her civil action to enforce her rights under the Labor Code and seek compensation accordingly.

Claimant electronically filed the initial notice with the LWDA and sent the initial notification via Certified Mail to the Companies on or about October 10, 2023, which is enclosed for reference as Exhibit A (“Original Notice”) and incorporated herein by reference. Since filing the initial notice, Claimant has become aware of new information and amends her prior notice.

AMENDED DEFINITION AND ADDITIONAL FACTUAL ALLEGATIONS

Pursuant to Labor Code § 2699(a), and by way of this amended notice, Claimant intends to represent herself and all other AGGRIEVED EMPLOYEES, defined as follows: “All current and former hourly-paid or non-exempt employees of Wilhelm LLC who worked in the State of California at any time from June 19, 2019, to the present date (hereinafter “Aggrieved Employees”).

Upon investigation, Plaintiff contends that the other Aggrieved Employees include, but are not limited to, flaggers, tree trimmers, machine operators, and drivers, all who suffered similar wage and hour violations to the ones Claimant asserted in the Original Notice.

Plaintiff further contends that other Aggrieved Employees worked off-the-clock hours, including pre-shift and post-shift time, due to the newly implemented safety procedures related to COVID-19.

Plaintiff also asserts that on the rare occasion meal periods were presented, they were combined with Aggrieved Employees’ initial meal periods which resulted in unlawful meal and rest periods.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to her or other losses incurred by her or by any other aggrieved employee of the Companies, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in her complaint.

Very truly yours,



Taylor M. Gee
Attorney at Law

EXHIBIT 6

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE LAINEZ,
Plaintiff,
v.
WILHELM, LLC,
Defendant.

Case No. [4:23-cv-04421-KAW](#)

**ORDER DENYING MOTION TO
REMAND; ORDER GRANTING
MOTION TO COMPEL
ARBITRATION; ORDER DENYING
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Re: Dkt. Nos. 18, 31, 34

Defendant Wilhelm, LLC removed this case to federal court on August 25, 2023. On December 11, 2023, Plaintiff Jose Lainez filed a motion to remand on the grounds that the Court lacked subject matter jurisdiction. (Pl.'s Remand Mot., Dkt. No. 18). On February 15, 2024, Defendant filed a motion for judgment on the pleadings (Def.'s J. Mot., Dkt. No. 31) and a motion to compel arbitration. (Def.'s Arbitration Mot., Dkt. No. 34.)

Upon review of the moving papers, the Court finds this matter suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and, for the reasons set forth below, DENIES Plaintiff's motion to remand, GRANTS Defendant's motion to compel arbitration, and DENIES Defendant's motion for judgment on the pleadings without prejudice.

I. BACKGROUND

A. Factual Background

Defendant provides tree and debris removal services with locations in Petaluma, CA and Oroville, CA. Plaintiff worked as a machine operator and driver. (First Am. Compl., "FAC," Dkt. No. 1 at 35 ¶ 10.)

On March 24, 2021, Plaintiff Jose Lainez, on behalf of himself and others similarly

1 situated and the general public, filed a class action complaint in Sonoma County Superior Court.
 2 (Not. of Removal., Dkt. No. 1 ¶ 1.) On December 9, 2021, Plaintiff file an amended complaint
 3 (“FAC”) via which he dismissed all class claims, leaving in controversy only the claims for PAGA
 4 civil penalties. (Not. of Removal ¶ 2.) Therein, Plaintiff alleges that he and all other aggrieved
 5 employees were not paid for all hours worked, including overtime hours worked, due to pre- and
 6 post shift off-the-clock work, including but were not limited to gathering tools and materials,
 7 cleaning the job site, filling out forms, receiving work instruction, and putting on personal
 8 protective equipment (“PPE”). (FAC ¶ 11.) Instead, Defendant only paid for scheduled shifts, not
 9 actual hours worked. *Id.* Plaintiff further alleges that employees were denied adequate meal and
 10 rest periods, that Defendant failed to issue accurate, itemized wage statements, and that former
 11 employees were owed waiting time penalties because they were not paid all monetary
 12 compensation owed at the time of separation. (FAC ¶¶ 14, 17-19.) Wilhelm answered the FAC on
 13 March 22, 2022. (Not. of Removal ¶ 3, Ex. C.)

14 Defendant contends that, “[t]hroughout his pleadings, Plaintiff omitted the fact that he was
 15 a member of a union and whose employment was governed by a collective bargaining agreement
 16 (“CBA”) since January 1, 2020, and then onward until his separation from Wilhelm on July 13,
 17 2020.” (Not. of Removal ¶ 5.) On July 26, 2023, in the process of gathering information requested
 18 by Plaintiff, Defendant identified facts suggesting that Plaintiff was a member of a union. (Notice
 19 of Removal ¶ 6.) Thereafter, Wilhelm conducted an investigation to confirm Plaintiff’s union
 20 affiliation and the date on which Plaintiff was inducted to a union. *Id.* On August 25, 2023,
 21 Wilhelm confirmed that Plaintiff was a unionized member of the Local Union 1245 of the
 22 International Brotherhood of Electrical Workers, AFL-CIO since January 1, 2020. (Not. of
 23 Removal ¶ 7; see Collective Bargaining Agreement, “CBA,” Not. of Removal, Ex. D.) On August
 24 25, 2023, within 30 days of this discovery, Defendant removed this case to federal court. (*See*
 25 *generally* Not. of Removal.)

26 **B. Procedural Background**

27 **i. Motion to Remand**

28 On December 11, 2023, Plaintiff filed a motion to remand. (Pl.’s Remand Mot., Dkt. No.

18.) On December 26, 2023, Defendant filed an opposition. (Def.’s Remand Opp’n, Dkt. No. 20.)
On January 2, 2024, Plaintiff filed a reply. (Pl.’s Remand Reply, Dkt. No. 22.)

ii. Motion to Compel Arbitration

On February 15, 2024, Defendant filed a motion to compel arbitration. (Def.’s MTCA Mot., Dkt. No. 34.) On February 29, 2024, Plaintiff filed an opposition. (Pl.’s MTCA Opp’n, Dkt. No. 40.) On March 7, 2024, Defendant filed a reply. (Def.’s MTCA Reply, Dkt. No. 45.)

iii. Motion for Judgment on the Pleadings

On February 15, 2024, Defendant filed a motion for judgment on the pleadings. (Dkt. Nos. 31-33.) On February 29, 2024, Plaintiff filed an opposition. (Dkt. No. 39.) On March 7, 2024, Defendant filed a reply. (Dkt. No. 43.)

II. LEGAL STANDARDS

A. Motion to Remand

“The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper, and that the court resolves all ambiguity in favor of remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (quotations and citations omitted). Federal courts must “reject federal jurisdiction if there is any doubt as to the right of removal in the first instance.” *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d 543, 550 (9th Cir. 2018) (quotations and citations omitted).

The “well-pleaded complaint rule” provides “federal jurisdiction exists only when a federal question is present on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). “A corollary to the well-pleaded complaint rule is the ‘complete preemption’ doctrine, which applies in cases in which ‘the preemptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” *In re NOS Commc’ns, MDL No. 1357*, 495 F.3d 1052, 1057 (9th Cir. 2007) (quoting *Caterpillar*, 482 U.S. at 393).

B. Motion to Compel Arbitration

Under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds that exist at law or in equity

for the revocation of a contract.” 9 U.S.C. §2. “Once the Court has determined that an arbitration agreement relates to a transaction involving interstate commerce, thereby falling under the FAA, the court’s only role is to determine whether a valid arbitration agreement exists and whether the scope of the dispute falls within that agreement.” *Ramirez v. Cintas Corp.*, No. C 04-00281 JSW, 2005 U.S. Dist. LEXIS 43531, at *8 (N.D. Cal. Nov. 2, 2005) (citing 9 U.S.C. § 4; *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)).

C. Motion for Judgment on the Pleadings

A motion for judgment on the pleadings may be brought at any time “[a]fter the pleadings are closed,” but “earlier enough not to delay trial.” *See* Fed. R. Civ. P. 12(c). The standard applied to decide a Rule 12(c) motion is the same as the standard used in a Rule 12(b) motion to dismiss for failure to state a claim. *See Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011). “[J]udgment on the pleadings is appropriate when, even if all allegations in the complaint are true, the moving party is entitled to judgment as a matter of law.” *Westlands Water Dist. v. Firebaugh Canal*, 10 F.3d 667, 670 (9th Cir. 1993). In deciding the motion, a court may consider “(1) exhibits to the non-moving party’s pleading, (2) documents that are referred to in the non-moving party’s pleading, or (3) facts that are included in materials that can be judicially noticed.” *See Yang v. Dar Al-Handash Consultants*, 250 Fed. App’x 771, 772 (9th Cir. 2007). The court need not automatically accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations. *See W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

III. DISCUSSION

The Court will address each of the pending motions below.

A. Motion to Remand

First, Plaintiff moves to remand this case to state court on the grounds that Defendant’s removal was untimely, and, alternatively, that the claims are not preempted by the § 301 of the Labor Management Relations Act (“LMRA”), such that the Court lacks subject matter jurisdiction. (Pl.’s Remand Mot. at 1, 8.) The Court will address both arguments below.

//

1 **i. Removal was timely.**

2 Plaintiff argues that the case was not timely removed from state court, because, on January
3 20, 2021, Defendant produced numerous documents from Plaintiff’s personnel file that indicated
4 his union affiliation, including his application for union membership, employee change, notice
5 indicating a union wage increase, payroll deduction authorization, and a wage statement showing
6 that union dues were paid. (Pl.’s Remand Mot. at 9; Decl. of Un Kei Wu, “Wu Decl.,” Dkt. No.
7 18-1 ¶¶ 3, 5-8, Exs. A-D.)

8 In opposition, Defendant contends that the January 2021 document production is
9 irrelevant, and that it timely removed the lawsuit because neither of the two 30-day periods for
10 removal under 28 U.S.C. § 1446 apply. (Def.’s Remand Opp’n at 2-3, 6.) The fact that the FAC
11 was not clearly removable on its face is undisputed. (See Pl.’s Remand Mot. at 9.)

12 28 U.S.C. § 1446(b) provides two 30-day periods for removal. The first is when the
13 pleading is removable on its face. 28 U.S.C. § 1446(b)(1). The second is, when “the case stated
14 by the initial pleading is not removable, a notice of removal may be filed within 30 days after
15 receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion,
16 order or other paper from which it may first be ascertained that the case is one which is or has
17 become removable.” 28 U.S.C. § 1446(b)(3); *see also Harris v. Bankers Life & Cas. Co.*, 425 F.3d
18 689, 694 (9th Cir. 2005) (discussion of two removal periods). “If neither of these requirements
19 applies, the initial 30-day clock does not run—even where the removing party has possession of
20 documents that provide grounds for preemption.” *Galeano v. Am. etc., Inc.*, No. 16-CV-0033-PJH,
21 2016 WL 908093, at *2 (N.D. Cal. Mar. 10, 2016) (citing *Harris*, 425 F.3d at 695-97).

22 Here, it is undisputed that the basis for removal does not appear on the face of the initial or
23 first amended complaints, and that there was no “other paper” filed or otherwise **presented by**
24 **Plaintiff** in the state court case that provided a basis for removal. *See Galeano*, 2016 WL 908093,
25 at *2 (emphasis added). Thus, Plaintiff’s argument that Defendant has known, based on
26 Defendant’s production of the personnel file, that Plaintiff was a union member is unavailing
27 because it ignores § 1446(b)(3)’s requirement that the plaintiff produce the document. Moreover,
28 the Court notes that Defendant is permitted to file a notice of removal outside of the two

enumerated, 30-day periods based on its own information. *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013). Indeed, as of March 30, 2022, and despite the prior production of Plaintiff’s personnel file, neither Plaintiff’s counsel nor Defense counsel were aware that Plaintiff was a member of a union. (3/30/22 Email, Decl. of Vincent R. Fisher, Dkt. No. 21 ¶ 4, Ex. A.) Thus, the Court finds that Defendant’s January 2021 document production did not trigger a 30-day removal window, rendering removal timely.

ii. LMRA preemption

Defendant removed on the grounds that some of the predicate violations underlying Plaintiff’s PAGA claims are preempted by § 301 of the LMRA, which provides “[s]uits for violation of contracts between an employer and a labor organization... may be brought in any district court of the United States.” Labor Management Relations Act, 1947, § 301(a), 29 U.S.C. § 185(a). “Although § 301 contains no express language of preemption, the Supreme Court has long interpreted the LMRA as authorizing federal courts to create a uniform body of federal common law to adjudicate disputes that arise out of labor contracts.” *Curtis v. Irwin Indus., Inc.*, 913 F.3d 1146, 1151 (9th Cir. 2019) (citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210 (1985)); see also *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103–04 (1962). As a result, “a civil complaint raising claims preempted by § 301 raises a federal question that can be removed to a federal court.” *Curtis*, 913 F.3d at 1152.

In *Burnside v. Kiewit Pacific Corp.*, the Ninth Circuit adopted a two-part test for analyzing whether § 301 preempts a state law claim. 491 F.3d 1053, 1059 (9th Cir. 2007). Under the *Burnside* test, courts first “ask whether the asserted cause of action involves a right [that] exists solely as a result of the [Collective Bargaining Agreement].” *Curtis*, 913 F.3d at 1152 (quotation marks and citations omitted). If the answer to the first question is yes, then “the claim is preempted and [the] analysis ends there.” *Id.* at 1152-53 (quoting *Burnside*, 491 F.3d at 1059). If the answer to the first question is no, then courts “proceed to the second step and ask whether a plaintiff’s state law right is substantially dependent on analysis of” the collective bargaining agreement. *Id.* (quotations and citations omitted). To answer this question, courts consider “whether the claim cannot be resolved by simply look[ing] to versus interpreting the [Collective

Bargaining Agreement].” *Id.* (quotations and citations omitted).

a. LMRA § 301 is a basis for removal.

As a threshold issue, Plaintiff contends that his PAGA claim is not preempted by the LMRA, because he makes no mention of the CBA in the FAC, and statutory exemptions are affirmative defenses that may not form the basis for LMRA preemption. (Pl.’s Remand Mot. at 6.) Essentially, Plaintiff argues that he can artfully plead his claims to avoid LMRA preemption by not mentioning the CBA. *See id.* Plaintiff is mistaken. In *Curtis*, the Ninth Circuit expressly found that § 301 was an exception to the general rule that “federal preemption is a defense that does not authorize removal to federal court, [because] § 301 has such ‘extraordinary pre-emptive power’ that it ‘converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” *Curtis*, 913 F.3d at 1152 (quoting *Metro. Life Ins. v. Taylor*, 481 U.S. 58, 65, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987)). “In other words, a civil complaint raising claims preempted by § 301 raises a federal question that can be removed to a federal court.” *Curtis*, 913 F.3d at 1152 (citing *Metro. Life Ins.*, 481 U.S. at 65).

To the extent that Plaintiff argues that *Curtis* cannot be relied upon because it was decided in the context of a motion to dismiss, he is mistaken. (Pl.’s Remand Reply at 3-4.) Indeed, *Curtis* expressly states that removal is proper in this circumstance. *Curtis*, 913 F.3d at 1152

Finally, post-*Curtis*, a majority of courts in this circuit have found that an affirmative defense of § 301 is sufficient to raise a federal question that can be removed even absent mention of a CBA or a concession from the plaintiff that the CBA applied to them. *See, e.g., Jimenez v. Young's Mkt. Co., LLC*, No. 21-CV-02410-EMC, 2021 WL 5999082, at *7 (N.D. Cal. Dec. 20, 2021) (collecting cases).

Thus, the Court finds that a defense of § 301 raises a removable federal question.

b. At least a portion of the PAGA claim is subject to preemption.

Next, the Court must determine whether the PAGA claim is subject to preemption. The Court notes that the operative complaint does not specifically identify which California Labor Code sections provide the basis for the PAGA claim. Instead, Plaintiff alleges that he seeks civil penalties in connection with Labor Code violations for unpaid wages, overtime compensation,

meal period premium pay, rest period premium pay, failure to furnish accurate, itemized wage statements, and waiting time penalties. (See FAC ¶ 22.) PAGA claims are derivative, so original jurisdiction is determined by whether the LMRA preempts the predicate claims. *Chatman v. WeDriveU, Inc.*, No. 3:22-CV-04849-WHO, 2022 WL 15654244, at *12 (N.D. Cal. Oct. 28, 2022) (citing *Radcliff v. San Diego Gas & Elec. Co.*, 519 F. Supp. 3d 743, 748 (S.D. Cal. 2021)).

Here, Plaintiff worked for Defendant as both a non-unionized employee and as a unionized employee, and he seeks to represent both groups of aggrieved employees in his PAGA claim. (Pl.’s Remand Reply at 6; *see also* Not. of Removal ¶ 16.) Plaintiff’s PAGA claim includes violations related to unpaid overtime compensation and meal periods, which are addressed in the CBA. (CBA, Not. of Removal, Ex. D at § 3.1 (regular hours and meal periods), 3.3 (overtime), 3.8 (alternate work schedule permitting four, 10-hour days).)

1. Overtime and meal breaks

California Labor Code § 510 addresses the right to overtime compensation for hours worked in excess of eight hours per day or 40 hours per week. Cal. Lab. Code § 510(a). California Labor Code § 514, however, provides an exception for employees covered by collective bargaining agreements, so long as the overtime premium is no less than 30% more than the state minimum wage. Cal. Lab. Code § 514. Plaintiff’s CBA provides that all work performed outside of regular hours be paid at double the regular straight-time rate of pay. (See CBA § 3.3.) Thus, the CBA provision for overtime pay satisfied § 514, such that § 510 does not apply to Plaintiff.

California Labor Code § 512 generally requires an employer to provide a 30-minute meal break to an employee working more than five hours per day, and a second meal break must be provided if an employee works more than 10 hours per day. Cal. Lab. Code § 512(a). Subdivision (a), however, does not apply to employees employed in a construction occupation or as a commercial driver if they are (1) covered by collective bargaining agreements, and (2) the valid CBA “provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum

wage rate.” Cal. Lab. Code § 512(e)(1)-(2). Here, the CBA specifies that the regular working hours are 7:00 a.m. to 3:30 p.m., and that the unpaid meal period of 30 minutes will normally be taken from 12:00 noon to 12:30 p.m., but that it “may be advance[d] or delayed an hour or less when work must necessarily be performed during the regular lunch period. Such a change in the lunch period shall not be deemed to require the payment of overtime.” (CBA § 3.1.) Thus, the CBA satisfies the exception set forth in § 512(e), such that § 512(a) does not apply to Plaintiff.

Since it is undisputed that Plaintiff is covered by the CBA, any right to overtime or meal period wages exist solely because of the CBA, the portion of the PAGA claim related to these claims are, therefore, preempted under § 301. *Chatman*, 2022 WL 15654244, at *9 (quoting *Curtis*, 913 F.3d at 1154).

2. Other alleged violations

Beyond a single conclusory statement, Defendant does not explain how the remaining violations for rest periods, the requirement to furnish accurate itemized wage statements, and waiting time penalties are covered by the CBA, or which provisions of the CBA preempt these claims. (See Def.’s Remand Opp’n at 14.) Indeed, Defendant only fully addresses overtime and meal periods. *See id.* at 12-13. To the extent that the CBA does not cover all alleged violations, the PAGA claim would ultimately not be preempted concerning those underlying Labor Code violations. *See Chatman*, 2022 WL 15654244, at *12; *see also Sarmiento v. Sealy, Inc.*, 367 F. Supp. 3d 1131, 1146 (N.D. Cal. 2019) (derivative PAGA claim not entirely preempted with portion of non-preempted claim remanded to state court). Since the sufficiency of the PAGA claim’s pleading will not be addressed at this juncture, the fact that at least some of the claim is clearly preempted is sufficient to confer subject matter jurisdiction.¹

Accordingly, the Court finds that the Court has subject matter jurisdiction under § 301, and the motion to remand is denied.

¹ The Court also notes that Plaintiff’s employment consisted of being non-union and being a union member, and he seeks to represent both union and non-union aggrieved employees, which may complicate the scope of the preemption issue for the alleged overtime and meal period claims. (See Pl.’s Remand Reply at 6.) This, however, is a question for the arbitrator. *See discussion, infra*, Part III.C.

B. Motion to Compel Arbitration

Having denied the motion to remand, the Court will now address the motion to compel arbitration.

i. Operative Arbitration Agreement

On October 7, 2019, Plaintiff signed an arbitration agreement as part of his onboarding process. (Agreement, Decl. of Jon Baber, “Baber Decl.,” Dkt. No. 34-2 ¶ 4, Ex. A; Decl. of Jose Lainez, “Lainez Decl.,” Dkt. No. 40-1 ¶ 4.) The document was titled “Agreement to Arbitrate Disputes” and was two pages long. (*See* Agreement at 1.) The Agreement bound the parties to arbitration pursuant to the FAA. *Id.* The Agreement covered any dispute arising from, or relating to, Plaintiff’s employment. *Id.* The Agreement provided for the selection of a neutral arbitrator to whom the parties mutually agree, it provided for reasonable discovery, and it required the arbitrator to issue a written award. *Id.* at 1-2. Finally, the Agreement did not contain any language limiting the scope of remedies available to Plaintiff, and it required Defendant to pay all fees and costs unique to arbitration. *Id.* at 2.

Plaintiff does not dispute that the arbitration agreement relates to a transaction involving interstate commerce, and is, therefore, governed by the FAA. Rather, he argues that the agreement is invalid on the grounds that it is unconscionable. (Pl.’s MTCA Opp’n at 2.)

Thus, the Court finds that the Agreement is governed by the FAA.

ii. Unconscionability

Courts apply state contract law to determine the enforceability of an arbitration agreement. *Pokorny v. Quixtar*, 601 F.3d 987, 994 (9th Cir. 2010). Under California law, “a contractual provision is unenforceable if it is both procedurally and substantively unconscionable.” *Kilgore v. KeyBank, Nat’l Ass’n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (citing *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 89, 99 Cal.Rptr.2d 745, 6 P.3d 669 (2000)). These two prongs operate on a sliding scale: the lesser the procedural unconscionability, the greater substantive unconscionability must be shown, and vice versa. *Armendariz*, 24 Cal. 4th at 89, 99 Cal.Rptr.2d 745, 6 P.3d 669. If the Court determines that any contractual provisions are unconscionable, the Court must then decide whether the unconscionable provisions are severable

1 from the rest of the contract. *Armendariz*, 24 Cal. 4th at 121–122, 99 Cal.Rptr.2d 745, 6 P.3d 669.

2 a. Procedural Unconscionability

3 “The procedural element of unconscionability focuses on oppression or surprise due to
4 unequal bargaining power.” *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1260 (9th Cir. 2017)
5 (internal quotation omitted).

6 Here, there can be no real dispute that there is at least some procedural unconscionability.
7 Plaintiff was required to sign the Agreement as a condition of his employment, making it a
8 contract of adhesion. (See Pl.’s MTCA Opp’n at 4; *Dotson v. Amgen, Inc.*, 181 Cal. App. 4th 975,
9 981 (2010) (finding procedural unconscionability when an offer was presented on a take-it-or-
10 leave-it basis).)

11 Additionally, Plaintiff argues that “despite Defendant’s representatives [having]
12 communicated with Plaintiff in Spanish, the arbitration agreement and other documents were
13 solely in English without providing Plaintiff any translation to Spanish.” (Pl.’s MTCA Opp’n at 4
14 (Lainez Decl. ¶¶ 5-6).) In support of his opposition, Plaintiff provides a sworn declaration that is
15 entirely in English without any indication of language translation, and merely states that Plaintiff
16 is “only fluent in Spanish.” (Lainez Decl. ¶ 5.) Nowhere does it address the extent of his English
17 proficiency. Even so, Plaintiff executed an English-language declaration under penalty of perjury
18 without using court document translation protocols. Thus, the Court must presume that Plaintiff is
19 proficient enough in English to understand and execute the detailed, sworn declaration.

20 Regardless, “[g]enerally, a party may not avoid enforcement of an arbitration provision because
21 the party has limited proficiency in the English language.” *Caballero v. Premier Care Simi Valley*
22 *LLC*, 69 Cal. App. 5th 512, 518, 284 Cal. Rptr. 3d 560, 565 (2021). “If a party does not speak or
23 understand English sufficiently to comprehend a contract in English, it is incumbent upon the
24 party to have it read or explained to him or her.” *Id.* at 518-19 (citing *Ramos v. Westlake Servs.*
25 *LLC*, 242 Cal. App. 4th 674, 687, 195 Cal. Rptr. 3d 34, 44 (2015)). An exception to this general
26 rule is when a party was fraudulently induced to sign the contract. *Id.* at 519. This exception,
27 however, is inapplicable because Plaintiff does not contend that Defendant defrauded him. *See id.*
28 He merely contends that he was not presented with the Agreement in Spanish or an explanation of

what he was agreeing to. (*See id.*; Pl.’s MTCA Opp’n at 4.) Ultimately, Plaintiff was responsible for informing Defendant that he did not understand the Agreement, and he does not cite to any legal authority that Defendant had an initial burden of assessing whether he understood the English version. *See Caballero*, 69 Cal. App. 5th at 519 (employer had no such burden). As it is incumbent on the individual with limited English proficiency to affirmatively seek out an explanation if he did not understand the Agreement, Plaintiff’s “decision to sign a document he could not read is not a basis for avoiding an arbitration agreement.” *See id.* (citing *Brookwood v. Bank of America* (1996) 45 Cal. App. 4th 1667, 1674 (1996) (“A party cannot use his own lack of diligence to avoid an arbitration agreement.”).)

Thus, while Plaintiff’s purported limited English proficiency does not give rise to any procedural unconscionability, the Court finds that the fact that he was required to sign the Agreement as part of the onboarding process confers some degree of procedural unconscionability, because it was adhesive.

b. Substantive Unconscionability

The Court, however, finds that there is no substantive unconscionability because the arbitration agreement does not require the waiver of Plaintiff’s representative PAGA claim. “Substantive unconscionability pertains to the fairness of an agreement’s actual terms and to assessments of whether they are overly harsh or one-sided.” *Pinnacle Museum Tower Ass’n v. Pinnacle Market Dev. (US), LLC*, 55 Cal. 4th 223, 246 (2012). Terms are unconscionable if they are “overly harsh, unduly oppressive, so one-sided as to shock the conscience, or unfairly one-sided.” *Sanchez v. Valencia Holding Co., LLC*, 61 Cal. 4th 899, 910-11 (2015) (internal quotations omitted). Thus, the court must look for terms that are “unreasonably favorable to the more powerful party.” *Id.* at 911 (internal quotation omitted).

Here, Plaintiff argues that the arbitration agreement contains a representative PAGA waiver, which is inherently unconscionable. (Pl.’s MTCA Opp’n at 6.) Plaintiff is mistaken, because no such waiver exists. Indeed, the arbitration agreement merely states that “The parties also agree that, to the extent permitted by law, they will be precluded from asserting in arbitration, or any other forum, any representative claims otherwise permitted by law.” (Agreement at 1.)

Since waivers of representative PAGA claims are not permitted by California law as a matter of public policy, no such right has been waived. *See Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104, 1117, 532 P.3d 682, 688 (2023) (“categorical waiver of the right to bring a PAGA action is unenforceable”). Thus, there is no substantive unconscionability.

iii. Case is stayed pending arbitration.

In light of the foregoing, Defendant’s motion to compel arbitration of Plaintiff’s individual claim is granted, and the representative component of Plaintiff’s PAGA claim and the instant proceedings are stayed pending the resolution of the arbitration. 9 U.S.C. § 3.

C. Motion for Judgment on the Pleadings

Since the Court has granted the motion to compel arbitration, the Court denies the pending motion for judgment on the pleadings without prejudice. The Court finds that the sufficiency of the pleadings is best resolved during the forthcoming arbitration proceedings, so Defendant is permitted to refile a Rule 12(c) motion before the arbitrator.

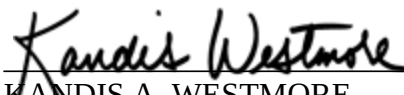
IV. CONCLUSION

For the reasons set forth above, Plaintiff’s motion to remand (Dkt. No. 18) is DENIED and Defendant’s motion to compel arbitration (Dkt. No. 34) is GRANTED. The Court STAYS the proceedings in the instant case pending resolution of the arbitration, as required by 9 U.S.C. § 3. The parties shall provide a joint status report every **180 days** from the date of this order, or within **30 days** of the completion of the arbitration, whichever is sooner.

Finally, the Court DENIES Defendant’s motion for judgment on the pleadings (Dkt. No. 31) without prejudice.

IT IS SO ORDERED.

Dated: September 25, 2024


 RANDIS A. WESTMORE
 United States Magistrate Judge