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on behalf of himself and others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

DARIN WRIGHT, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

TIERRA DEL SOL FOUNDATION, a
California nonprofit corporation; and DOES 1
to 100, inclusive,

Defendants.

Case No.: 23STCV24812

*[Assigned for all purposes to: Hon. David S.
Cunningham, III, Judge; Dept. 11]*

**DECLARATION OF DAVID LAVI IN
SUPPORT OF PLAINTIFF DARIN
WRIGHT'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement; Memorandum of
Points and Authorities; Declaration of Darin
Wright; and [Proposed] Order]*

Date : August 27, 2025
Time : 10:00 a.m.
Dept. : 11

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I, David Lavi, declare:

1. I am an attorney licensed to practice law in the state of California and have been admitted to practice before this Court. I am a partner at E&L, LLP, and Counsel for Plaintiff in this action. Based on my assignment to this case and familiarity with the file and action in this matter; I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto. I am a member in good standing of all the State Courts of California.

2. This Declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement.

INTRODUCTION

3. Plaintiff Darin Wright (“Plaintiff”) has reached a proposed class and representative action settlement with Defendant Tiera Del Sol Foundation (“Defendant”) to resolve various wage and hour related violations. Plaintiff primarily alleges the following violations: (1) failure to pay all minimum and overtime violations due to: (i) Defendant’s failure to pay its employees all owed wages due to their failure to properly keep track of their working hours, or Defendant’s unlawful employer-friendly one-way rounding policy; (ii) Defendant’s failure to pay its employees all owed wages due to employees performing work off-the-clock for Covid-19 screening; and (iii) Defendant’s requirement that employees use a corporate phone for clocking-in and out, however the corporate phone would not allow Plaintiff to clock-in at their jobsite, but rather at the proximity of their corporate office; (2) failure to pay a proper overtime rate of pay for overtime hours worked based on a failure to factor in non-discretionary bonuses that are not excludable regular rate of pay for overtime calculation purposes; (3) meal period violations, premised on (i) missed, late, and/or short first meal periods due to work demands, and (ii) not providing second meal periods for shifts over 10.0 hours; (4) rest period violations; (5) failure to pay accrued and vested vacation at time of termination; (6) failure to pay sick pay at the proper rate of pay; and (7) failure to reimburse employees for business expenditures that were necessarily incurred by employees by using their cell

1 phones during the course of employment. Based on these violations, Plaintiff also brought
2 derivative claims for Defendant’s alleged failure to pay all wages owed, including final wages, for
3 wage statement violations, and sought civil penalties under the Private Attorneys General Act of
4 2004 (“PAGA”).

5 4. Plaintiff now respectfully requests that this Court preliminarily approve this non-
6 reversionary, common-fund class action settlement,¹ in which Defendant has agreed to pay Seven-
7 Hundred Thousand Dollars and Zero Cents (\$700,000.00) on behalf of all non-exempt employees
8 who worked for Defendant at any time during the Class Period from October 11, 2019 to November
9 19, 2024.

10 **THE PARTIES, THE COMPLAINTS, AND PROCEDURAL HISTORY**

11 5. The Parties – Defendant is a nonprofit corporation that holds themselves out as
12 dedicated to empowering individuals with developmental disabilities, including but not limited to,
13 by creating person-centered opportunities in employment, education, and the arts. Plaintiff worked
14 for Defendant from approximately August 14, 2000 to on or about September 11, 2023. *See*,
15 Declaration of Darin Wright in Support of Class Action Settlement (“Plaintiff Decl.”) ¶ 2. Like the
16 majority of other non-exempt employees, Plaintiff worked for Defendant on an hourly basis as a
17 direct support professional, assisting clients in their daily life activities. *Id.* Plaintiff was subject to
18 Defendant’s wage and hour policies that are at issue in this action. *Id.*

19 6. The Complaint – Plaintiff filed a class action complaint against Defendant on
20 October 11, 2023, in Los Angeles County Superior Court, which alleges class wide causes of action
21 for: (1) minimum wage violations; (2) failure to pay all overtime wages, and failure to include
22 additional remuneration when calculating overtime wages; (3) meal period violations; (4) rest
23 period violations; (5) failure to timely pay all vested unused vacation pay upon termination; (6)

24 ¹ The executed Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”), which is
25 nearly identical to the Los Angeles Superior Court Model Class Action and PAGA Settlement Agreement
26 and Class Notice, is attached to the Declaration of David Lavi as Exhibit 1. All defined terms in this motion
27 have the same definitions as used in the Settlement. Plaintiff’s PAGA notice letter to the LWDA, which was
28 submitted on November 9, 2023, and confirmation of filing, is attached to the Declaration of David Lavi as
Exhibit 2. Plaintiff uploaded the proposed Settlement to the LWDA on April 9, 2025. The confirmation is
attached as Exhibit 3.

1 failure to provide sick pay; (7) failure to reimburse for necessary business expenses; (8) failure to
2 timely pay earned wages during employment; (9) waiting time penalties; (10) wage statement
3 violations; and (11) unfair competition.

4 7. On February 16, 2024, Plaintiff amended his complaint to add a cause of action for
5 civil penalties under the Private Attorneys General Act pursuant to Labor Code Sections 2698 *et*
6 *seq.* (the “Class Action Complaint”).

7 8. Discovery – After agreeing to participate in mediation, Defendant produced nearly
8 15% sampling data of its relevant time and pay records as well as its wage and hour policies and
9 other documents and information relevant to the claims alleged in advance of mediation through
10 informal discovery.

11 **MEDIATION AND ARMS-LENGTH NEGOTIATION**

12 9. Class Counsel conducted a detailed review of the time and pay records produced by
13 Defendant prior to mediation. Specifically, Class Counsel transmitted the time and pay data to their
14 retained economics expert, Mr. Sean Berger (“Mr. Berger”), a Partner and Senior Data Analyst at
15 Berger Consulting Group, and requested that Mr. Berger confirm the date range of the data
16 provided, and extrapolate: (i) the number of pay periods and shifts worked by the class during the
17 Class Period and the PAGA period; (ii) the average rate of pay for the class; (iii) the number of
18 shifts worked over 3.5 hours, over 5.0 hours, over 6.0 hours, over 8.0 hours, over 10.0 hours, and
19 over 12.0 hours; and (iv) the first and second meal period violation rate based on the produced time
20 records. In addition, Class Counsel requested that Mr. Berger review the time data produced by
21 Defendant to determine the amount of unpaid wages due to i) Defendant’s failure to properly
22 calculate the regular rate of pay, ii) unpaid off-the-clock work due to Covid-19 screening, iii) work
23 that went uncompensated due to Defendant’s employer-friendly rounding policy, and unpaid sick
24 pay to include regular rate of pay. As discussed in detail below, this analysis allowed Plaintiff to
25 determine the scope of the various violations alleged in the Class Action Complaint and
26 Defendant’s potential exposure if the Parties were not able to reach a settlement at mediation.

1 10. On May 23, 2024, after research and analysis, including Class Counsel’s analysis of
2 Defendant’s potential exposure with the help of a retained economics expert, a full-day mediation
3 was held with Mr. David Phillips, Esq., a well-respected wage and hour class action mediator.
4 During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of
5 certification of Plaintiff’s claims, and the legal basis for the claims and defenses for the claims
6 alleged in the Class Action Complaint. After a full-day mediation, the Parties ultimately accepted a
7 mediator’s proposal for a class and representative wide settlement for \$700,000.00. Months after
8 mediation, the Parties signed the Class Action and PAGA Settlement Agreement and Class Notice
9 (“Settlement”), which is nearly identical to the Los Angeles Superior Court Model Class Action and
10 PAGA Settlement and Class Notice.

11 11. After deducting amounts for the Court-approved attorneys’ fees and verified costs,
12 the Class Representative Service Payments to Plaintiff, Settlement Administrator costs, and the
13 PAGA payment to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount
14 (“NSA”) amount of approximately \$397,666.67 to all Class Members who do not timely opt out
15 (“Class Members”). *See* Settlement, ¶¶ 3.1; 7.5.1; *et seq.*² The NSA shall be distributed to all Class
16 Members based on each participating Class Member’s proportionate number of Eligible Workweeks
17 that he or she was worked during the Class Period. *See* Settlement, ¶ 3.1. Twenty-Five Thousand
18 Dollars and Zero Cents (\$25,000.00) of the NSA has been designated as the “PAGA Amount,” and
19 shall be distributed to Class Members proportionally based on the number of pay periods worked
20 during the PAGA Period. *See* Settlement, ¶¶ 1.32; 3.2.5, 3.2.5.1. According to Defendant, there are
21 approximately 685 total Class Members who worked approximately 78,737 workweeks. The
22 average Individual Settlement Payment is projected to be approximately \$580.54.

23 12. Based on Defendant’s representations of its financial condition made at mediation,
24 the Parties have agreed that the Settlement will be paid out in two installments to accommodate
25 Defendants’ financial condition: (1) the first installment payment in the amount of \$350,000.00 shall
26 be due 30 days after the Court’s Final Approval of the Settlement or May 23, 2025, whichever date

27 ² Defendant will pay the employer’s share of payroll taxes separately from, and in addition to, the Gross
28 Settlement Amount. *See* Settlement, ¶ 3.1.

comes later; and (2) the second installment in the amount of \$350,000.00 shall be due six months (180 days) after the first payment due date. *See* Settlement, ¶¶ 3.1; 4.3. The Settlement Administrator shall hold all portions of the Maximum Settlement Amount in an interest-bearing account for the benefit of the Settlement Class until the time for disbursement.

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

13. Class Counsel has investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff. Class Counsel also engaged in multiple calls and email exchanges between with Defendant's counsel.

14. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged. Defendant contends that it complied in good faith with wage and hour laws and has dealt legally and fairly with Plaintiff and putative class members.

15. However, Plaintiff believes that his case is suitable for class certification in that he believes there was a company-wide policy that affected Defendant's employees which could be established using representative testimony from class members, as well as the practices brought forth in discovery. While Plaintiff asserts that this is a case for certification, Plaintiff also realizes that there is always a significant risk associated with class certification. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's compelling defenses thereto, and the difficulties in establishing damages for the Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class Members.

1 16. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks
2 of litigation and understands the benefit of his Class receiving settlement funds immediately as
3 opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or
4 the damages awarded, and/or on an appeal that can take several more years to litigate.

5 17. Both Plaintiff and Defendant's counsel are experienced in employment, wage and
6 hour and class action matters. Class Counsel, E&L, LLP, is a well-regarded firm that handles almost
7 exclusively employment matters. Defendant's counsel, Alfred Landegger, Esq., and Roxana E.
8 Verano, Esq., of Landegger Verano & Davis, ALC, are also well-regarded and respected as
9 employment defense counsel. Counsel on both sides share the view – endorsed by an experienced
10 wage and hour class action mediator – that this is a fair and reasonable settlement in light of the
11 complexities of the case, the state of the law and uncertainties of class certification and litigation,
12 and the benefit the settlement confers on the class. Given the risks inherent in litigation, in class
13 certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and
14 reasonable and in the best interests of the class.

15 18. According to Defendant, there are approximately 685 total Class Members who
16 worked approximately 78,737 workweeks. The Settlement provides a fair and reasonable recovery
17 for the Class in the face of disputed claims. Plaintiff conducted an analysis of underpaid wages and
18 penalties due to Defendant's alleged unlawful meal and rest period policies/practices, off-the-clock
19 violations, overtime violations, regular rate claims, sick pay, wage statement and waiting time
20 penalties, and PAGA civil penalties.

21 **SUMMARY OF RESULTS OF PLAINTIFF'S EXPOSURE ANALYSIS**

22 19. Off-The-Clock/Overtime Violations (Covid-19 and Rounding): Plaintiff alleged that
23 Defendant utilized a practice/policy of utilizing a rounding mechanism that always benefited the
24 employer and/or only compensated Class Members for scheduled time as opposed to time actually
25 worked. Specifically, the time data analysis confirmed that 38.5% of the shifts had all punch times
26 recorded to a quarter hour (e.g., 8:00 a.m. to 12:15 p.m., 12:45 p.m. to 5:30 p.m.). As a result, to the
27 extent a given shift time or meal period was rounded, Plaintiff alleges that it was always rounded

1 against the employees. As such, Plaintiff alleges that Defendant's timekeeping policy fails to
2 compensate Class Members when they actually worked more hours than were scheduled to work or
3 when they exercised meal periods of less than 30 minutes. As such, Plaintiff made an assumption
4 for the analysis that there were 30-minutes of unpaid wages per week due to off-the-clock, in which
5 Class Members were unpaid for the time spent subjected to Defendant's policy and protocols. As
6 such, Plaintiff alleges that Defendant's timekeeping policy failed to compensate Class Members for
7 their hours submit to Defendant's control. Plaintiff alleges that Defendant's one way rounding
8 policy resulted in an estimate of 30 minutes per week of off-the-clock being performed, resulting in
9 Class Members being underpaid 39,369 hours of which 32.1% is overtime wages during the Class
10 Period, which would constitute unpaid hours worked.

11 20. Plaintiff also alleged that Defendant subjected employees to Covid-19 safety
12 protocols by requiring class members to line up and wait to undergo and undergo a nose swab prior
13 to being permitted to clock-in for their shifts. Plaintiff alleged that Class Members were not paid for
14 this additional off-the-clock policy of Defendant, which exposes Defendant to unpaid wages and
15 overtime pay. Plaintiff made an assumption for the analysis that the Covid-19 protocols, especially
16 nose swaps, enforced by Defendant were for the period of 2020 through 2023, in which Class
17 Members were unpaid for the time spent subjected to Defendant's policy and protocols. As such,
18 Plaintiff alleges that Defendant's timekeeping policy failed to compensate Class Members when
19 they actually began working when they started to be screened for Covid-19 safety protocols off-the-
20 clock. Plaintiff's analysis alleges that Defendant's Covid-19 protocols resulted in an Class Members
21 being underpaid an estimate of 32,399 hours for nose swabs at 10 minutes per shift during the Class
22 Period, nearly all of which would constitute minimum hours worked since Plaintiff and Class
23 Members worked at least 7.0 hours per shift. Accordingly, Plaintiff estimated Defendant's exposure
24 as follows:

25 Covid-19 Nose Swab: 32,399 unpaid hours * \$16.62 (average rate of pay between June 1,
26 2020 to December 31, 2022) = \$538,471.38.

27 Rounding: [(39,369 unpaid hours * \$26.88 (average rate of overtime pay) * 32.1%) +
28

1 [39,369 unpaid hours * \$17.92 (average rate of pay) * 67.9%] = \$818,723.63

2 21. Defendant countered that throughout the Class Period it maintained its policy of
3 paying Class Members for all hours worked. Defendant argued further that by its very nature this
4 claim is not suited for class treatment, as there are no records to indicate how often or how much
5 off-the-clock work was performed for Covid-19 screening thereby prohibiting class certification of
6 this claim. See, *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 (holding that the
7 defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on
8 individual questions). Additionally, Defendant countered that to the extent that rounding ever
9 occurred, that it was legal because it was applied in a neutral even-handed way. See, *Ferra v. Loews*
10 *Hollywood Hotel, LLC*, (2019) 40 Cal. App. 5th 1239, 1253 (holding that a facially neutral rounding
11 policy that resulted in employees losing time on 55% of shifts, gaining time on 22.8% of shift, and
12 resulted in neither gaining or losing time on the remainder of shifts was not sufficient to show the
13 rounding policy systemically undercompensated employees).

14 22. In light of these defenses, Plaintiff discounted the maximum amount for these claims
15 by 45% for risk of non-certification, and an additional 35% for being unsuccessful on the merits, or
16 having the amount of damages reduced due to an over estimation of the amount of off-the-clock
17 work performed to arrive at an estimated exposure of \$485,197.22.

18 23. First & Second Meal Period Violations: Plaintiff alleges that Plaintiff and the Class
19 Members were routinely denied timely meal periods, and that meal periods were not received prior
20 to the end of their fifth hour worked. See, *Brinker Restaurant Corp. v. Superior Court*, (2012) 53
21 Cal.4th 1004, 1049 (“Under the wage order, as under the statute, an employer’s obligation is to
22 provide a first meal period after no more than five hours of work.”). While Defendant’s written
23 meal period policies are generally compliant, Plaintiff alleges that he and the Class Members in
24 reality were subject to an inconsistent meal period policy/practice that did not serve to track their
25 meal periods accurately in favor of automatically deducting thirty minutes off of their time sheets
26 each shift, regardless if a timely and legally compliant meal period was actually exercised.
27 Accordingly, Plaintiff alleges that he and the Class Members often did not receive meal periods and

1 when they did, the meal periods were often late and not duty-free as they were subject to the
2 carrying for and being with clients of Defendants, whom could not be left alone due to their
3 disabilities. See, *Brinker, supra*, 53 Cal.App.4th at 1040 (“[w]age orders and governing statute do
4 not countenance an employer’s exerting coercion against the taking of, creating incentives to forgo,
5 or otherwise encouraging the skipping of legally protected breaks.”) Indeed, the records provided
6 to Plaintiff for analysis reflect approximately 158,566 unique meal period violations³ during the
7 Class Period taking into account that nearly 53% of recorded shifts over 5.0 hours contained a
8 violation, and over 12% of shifts reflected meal periods being exercised after the conclusion of the
9 5th hour worked, and nearly 82% of 2,052 shifts reflected no 2nd meal period for shifts between 10
10 and 12 hours. Indeed, *Donohue v. AMN Servs., LLC*, (2021) 11 Cal. 5th 58, 68, makes clear the
11 rounding of meal periods is *per se* illegal (“The practice of rounding time punches for meal periods
12 is inconsistent with the purpose of the Labor Code provisions and the IWC wage order.”). As such
13 Plaintiff alleges that nearly 53% of shifts worked by the putative class were unlawful and trigger
14 meal period violations due to this rounding practice.

15 24. Based on the timekeeping records provided in connection with mediation, Plaintiff
16 estimated Defendant’s maximum exposure for first and second meal period violations at
17 \$2,841,502.72 (158,566 meal period violations * \$17.92 average meal premium).

18 25. However, Defendant maintains that it has always provided legally compliant first
19 and second meal periods to Class Members and maintained and enforced lawful meal period
20 policies which provide for timely and duty-free meal periods. Defendant further alleged that Class
21 Members had executed on duty meal waiver agreements, for shifts over 5, 6, and 10/12 hours.

22 26. Additionally, Defendant argues that any allegations of systemic meal period
23 violations should not apply to the entire Class because the alleged practice was one that, if it
24 occurred, was limited to a handful of employees who voluntarily skipped meal periods without
25 Defendant’s knowledge. Additionally, Defendant argues that to the extent Plaintiff’s allegations of

26 ³ Unique meal period violations are defined as shifts with at least one of the following: 1) recorded 1st meal
27 break after the end of the 5th hour for shifts greater than 5 hours; 2) first meal break less than 30 minutes for
28 shifts greater than 5 hours; 3) no 1st meal break for shifts greater than 5 hours; or 4) no 2nd meal break for
shifts greater than 10 hours.

1 meal period violations are premised on Plaintiff's allegations that meal period records were
2 unlawfully rounded, that this theory of liability too would fail, due to Defendant's steadfast position
3 that it was not unlawfully rounding time records and to the extent that rounding ever occurred, that
4 it was applied in a neutral even-handed manner. Defendant further argues that this claim would not
5 be certified due to the lack of any common evidence tying together the reason that Class Members
6 experienced a first meal period violation as the experiences of its employees varied greatly
7 depending on the job assignments and clients they worked with. Defendant also argues that the
8 presence of these affirmative defenses as to the voluntariness of a particular meal period decision
9 would preclude class certification. Moreover, Defendant argues that its exposure is vastly
10 overestimated as Plaintiff already claims unpaid off-the-clock time as a result of auto-deducting
11 meal period time and that Plaintiff cannot simultaneously recover a premium payment and unpaid
12 wages. See, *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal. 5th 93, 102 ("Although the extra
13 pay is designed to compensate for the unlawful deprivation of a guaranteed break, it also
14 compensates for the work the employee performed during the break period.") Therefore, Plaintiff
15 discounted the maximum amount that the class could potentially recover for meal period violations
16 by 65% for a risk of non-certification, and an additional 45% for a risk of losing on the merits, or
17 having exposure reduced due to Defendants' waiver arguments, to arrive at an estimated exposure
18 amount of \$703,271.92.

19 27. Rest Period Violations: Plaintiff argues that Defendant failed to authorize duty-free
20 rest periods and that he and the Class Members were made to work through the entirety of their
21 shifts without rest periods. Plaintiff Decl., ¶ 17; see also, *Brinker, supra*, 53 Cal.4th at 1028-31
22 (discussing the rate at which rest periods must be authorized and permitted). Plaintiff alleges that
23 Defendant's rest period practice was deficient and served to ensure that Plaintiff and the Class
24 Members were not able to exercise legally compliant rest periods due to their requirements that
25 employees, including Plaintiff, had to monitor clients at all times due to their disabilities. *Id.* Such a
26 policy by its nature violates California law which requires that "[d]uring required rest periods,
27 employers must relieve their employees of all duties and relinquish any control over how employees

1 spend their break time,” just as they must do during meal periods. *See Augustus v. ABM Security*
2 *Svcs., Inc.*, (2016) 2 Cal.App.5th 257, 260. Moreover, Defendant also failed to pay any rest period
3 premium wages per Labor Code Section 226.7 and Defendant failed to maintain any pay code for
4 paying rest period premium wages per Labor Code Section 226.7. *See, Safeway, Inc. v. Superior*
5 *Court (Esparza)*, (2016) 238 Cal.App.4th 1138, 1159 (2015) (certifying a UCL class based on
6 failure to make premium payments). Therefore, Plaintiff calculated Defendant’s maximum exposure
7 for rest period violations, assuming a rest period violation on all shifts over 3.5 hours, as follows:
8 327,952 rest period violations * \$17.92 average rest period premium = \$5,876,899.84.

9 28. However, Defendant contends that, despite Plaintiff’s arguments to the contrary, it
10 maintained legally compliant rest period policies and practices throughout the Class Period,
11 authorized and permitted all rest periods to class members, and in practice did not prevent the Class
12 Members from exercising rest periods. Defendant further argues that Plaintiff’s rest period claim is
13 inherently unsuited for class treatment as there are no records of whether or not rest periods were
14 taken, therefore requiring an individualized inquiry into whether each class member failed to take
15 rest periods on each shift, which would devolve into an unmanageable series of mini-trials,
16 especially in light of the fact that Class Members worked different job assignments with
17 Defendant’s clients throughout the Class Period, and therefore any alleged restrictions on
18 authorizing rest periods would be unique to the specific job description and/or assignment. In light
19 of these defenses, Plaintiff discounted the maximum amount for this claim by 65% for risk of non-
20 certification, and an additional 50% for a risk of being unsuccessful on the merits or having the
21 amount of violations determined to be less than Plaintiff allege to arrive at an estimated exposure of
22 \$1,028,457.47.

23 29. Regular Rate Claim: Throughout the Class Period, Defendant paid its employees
24 non-discretionary bonus payments that were not factored into the Class’s respective regular rates of
25 pay for overtime purposes. These additional compensations on Class Members paystubs includes:
26 Additional Earnings: ESS; Additional Earnings: SAW-SPOT Award SAW-SPOT AWARD;
27 Additional Earnings: SG1-SIGN-ON BO; Additional Earnings: WKE; Additional Earnings: INC-

1 INCENTIVE (Monthly); Additional Earnings: SAF-SAFETY PAY (Monthly); and Additional
2 Earnings: BON-BONUS (Quarterly). As stated, these non-discretionary payments must be included
3 in the regular rate of pay when calculating employees' overtime rates of pay. *See, Huntington*
4 *Memorial Hospital v. Superior Court* (2005) 131 Cal.App.4th 893, 902-903 (discussing regular rate
5 calculation requirements). Plaintiff's expert determined that Defendant's failure to include these
6 bonuses when calculating an overtime rate of pay led to a total underpayment of \$31,679 during the
7 Class Period.

8 30. However, Defendant counters that the incentive compensation represents
9 discretionary payments and therefore is not required to be included in the "regular rate" of pay. *See,*
10 29 U.S.C. § 207(e)(2)-(3) (discretionary bonuses, and compensation not made as compensation for
11 hours of employment, need not be included in "regular rate"). Moreover, Defendant argues that
12 differences in the frequency, type, and amount of incentive pay received by different Class
13 Members would preclude class certification of this claim. In light of these defenses, Plaintiff
14 discounted the maximum amount that the class could potentially recover for these violations by
15 20% for a risk of non-certification, and an additional 10% for a risk of losing on the merits, to arrive
16 at an estimated exposure amount of \$22,808.88.

17 31. Wage Statement Violations: With respect to wage statement violations, Plaintiff
18 contends that for each pay period in which there is an unpaid wage due to off-the-clock violation,
19 meal or rest period violation, regular rate of pay violation, Plaintiff and the Class Members would
20 have received a non-compliant wage statement in violation of Labor Code Section 226. These types
21 of derivative claims are routinely certified. *See, e.g., Finder v. Leprino Foods Co.* (E.D. Cal. Mar.
22 12, 2015) Case No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151 at *5 ("Thus, this court relies on
23 *Murphy* in finding that Section 226.7 premiums constitute wages, and are therefore required to be
24 included in wage statements under Section 226"). Plaintiff's data analysis reflected that there were
25 approximately 14,854 total wage statements issued during the relevant period and approximately
26 497 unique employees during the relevant time period. Plaintiff calculated Defendant's maximum
27 exposure for wage statement violations at \$184,000.00 (497 employees * \$4,000 aggregate penalty)

1 = \$1,988,000.00. *See*, Labor Code § 226(e). (However, should staking be argued, then Defendant’s
2 maximum exposure for wage statement penalty is $[\$50 \times 497] + [\$100 \times (14,854 - 497)] =$
3 $\$1,460,550.00$).

4 32. Based on Defendant’s arguments that: (i) no violations occurred, (ii) any alleged
5 violations were not “knowing and intentional” as required by Labor Code § 226(e), (iii) no injury
6 was suffered, and (iv) the decision in *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th
7 1308, which holds that there is no wage statement violation when the wage statements accurately
8 reflect the compensation received by an employee, Plaintiff discounted the calculated exposure by
9 50% for a risk of non-certification and an additional 35% for a risk of being unsuccessful on the
10 merits or having the number of violations reduced since only a subset of potential employees were
11 subject to Covid-19 nose swabs, the premise that employees had meal wavier agreements, and that
12 only a subset of employees received compensation, to arrive at an estimated total of \$646,100.00.

13 33. Waiting Time Penalties: Plaintiff alleges that Defendant is also liable for waiting
14 time penalties as a result of its failure to pay all off the clock and overtime wages and premium
15 wages owed. *See, e.g., Amaral v. Cintas Corp. No. 2*, (2008) 163 Cal.App.4th 1157, 1201 (“willful”
16 under Section 203 means the “employer has intentionally failed or refused to perform an act which
17 was required to be done” and need not be “based on deliberate evil purpose”). There are
18 approximately 258 Class Members who separated their employment with Defendant within the
19 relevant time period. The estimated average waiting time penalty per former employee was
20 calculated at \$6,504.40 ($\$17.92$ average hourly rate of pay * 7.0 hours per day * 30 days =
21 $\$3,763.20.00$), resulting in a total maximum exposure of \$970,905.60 (258 former employees x
22 $\$6,504.40$).

23 34. To the extent that Plaintiff’s waiting time penalty claim was derivative of his unpaid
24 wages, and meal and rest period claims, Defendant argues that not all former employees (if any)
25 did, in fact, experience under payment of wages (and therefore Plaintiff’s exposure was overstated).
26 Defendant also contends that because it possessed good-faith defenses to the underlying claims, any
27 failure to pay wages was not “willful” as a matter of law. Defendant further maintains that waiting
28

1 time penalties are not recoverable at all for meal and rest period violations. *See, Ling v. P.F.*
2 *Chang's China Bistro, Inc.*, (2016) 245 Cal.App.4th 1242, 1261 (suggesting that waiting time
3 penalties are not recoverable as a result of unpaid meal period premiums).

4 35. As a result, Plaintiff discounted the maximum exposure by 50% to account for the
5 risk of non-certification of the claims upon which the waiting time penalties rely, and an additional
6 65% for failing to prevail on the merits, including the inability to recover waiting time penalties for
7 missed meal and rest period premium payments, including the inability to establish willfulness, to
8 arrive at an estimated exposure of \$169,908.48.

9 36. **Sick Pay:** Plaintiff contends Defendant failed to include non-discretionary bonuses
10 and incentives in employees' regular rate of pay for purposes of sick leave pay. According to
11 Plaintiff's expert's analysis, the sum of pay period overtime calculated at base rate in addition to
12 one-half of the regular rate of pay is \$9,195; the sum of quarterly overtime calculated at base rate in
13 addition to one-half of the regular rate of pay is \$20,472; and the sum of monthly overtime
14 calculated at base rate in addition to one-half of the regular rate of pay is \$2,011. Finally, Plaintiff's
15 expert determined the amount of underpaid sick leave would be approximately \$119,998.

16 37. Plaintiff alleges that Defendant paid employees non-discretionary bonuses and
17 incentives but failed to include these amounts when calculating sick leave pay. As a result, sick
18 leave compensation was allegedly underpaid. Because these regular rate issues can often be
19 identified through a review of payroll records, Plaintiff argues that these claims are well-suited for
20 class certification, which reduces the risk of denial at the certification stage. However, Defendant is
21 likely to counter these assertions at trial by presenting evidence and witness testimony showing that
22 not all employees were eligible for, or actually received, such bonuses and incentives. Additionally,
23 Defendant may argue that the bonuses were discretionary, which would undermine Plaintiff's
24 theory of liability. Defendant could also produce evidence indicating that such bonuses and
25 incentives were rarely paid during the same pay periods as sick leave, thereby minimizing their
26 impact on sick leave calculations. Given these potential defenses, Plaintiff applied a 30% discount
27 to the maximum potential exposure to reflect the risk of non-certification of the claims supporting

1 the waiting time penalties, and a further 50% discount for the risk of not prevailing on the merits.
2 This results in an estimated exposure of \$41,999.30.

3 38. Failure to Reimburse: Plaintiff additionally alleged that Defendants as a matter of
4 policy/practice failed to reimburse Plaintiff and the Class Members for business related expenses
5 related to using their personal cell-phones, in violation of Labor Code § 2802. Upon further
6 investigation, however, Plaintiff discovered that this was an issue individualized to Plaintiff, and not
7 a claim typical of other Class Members. As such, Plaintiff assigned no value to this claim.

8 39. Vacation Pay: Plaintiff additionally alleged that Defendants as a matter of
9 policy/practice failed to compensate Plaintiff and the Class Members for all vested, unused vacation
10 pay at the time of their separation of employment in violation of Labor Code § 227.3. Upon further
11 investigation, however, Plaintiff discovered that this was an issue individualized to Plaintiff, and not
12 a claim typical of other Class Members. As such, Plaintiff assigned no value to this claim.

13 40. PAGA Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of
14 the foregoing alleged Labor Code violations. The specific statutory violations upon which Plaintiff
15 bases the claim under PAGA are: (i) Cal. Lab. Code §1194, 1194.2, 1197 for failing to pay all
16 minimum wages owed; (ii) Labor Code sections 204, 510, 558, 1197.1, and 1194, for failing to pay
17 all overtime wages owed; (iii) Labor Code sections 226.7, and 512, for meal period violations; (iv)
18 Labor Code sections 226.7 and 516 for rest period violations; (v) Labor Code section 226(e) for
19 failing to provide accurate, itemized wage statements; (vi) failure to provide proper sick pay wages
20 pursuant to Labor Code § 246; and (vii) Labor Code sections 201 through 204, and 210 for failing
21 to pay all timely wages, including wages owed upon termination. Plaintiff also alleged stand-alone
22 PAGA Penalties for failure to reimburse business related expenses pursuant to Labor Code § 2802,
23 and failure to pay accrued and vested vacation wages upon separation pursuant to Labor Code §
24 227.3, however after further investigation into these claims Plaintiff found neither to be applicable
25 to Plaintiff. Based on the violations addressed above, Plaintiff contends that Defendant is liable for
26 PAGA civil penalties for each of the estimated 14,854 pay periods worked during the PAGA period.
27 Accordingly, Plaintiff estimates Defendant's exposure as follows:

1 a. PAGA For Failure to Pay Wages at Separation: for 124 PAGA pay periods at
2 \$100 per violation, the PAGA penalty is **\$12,400.00**

3 b. PAGA for Unpaid Wages: for 497 employees for 14,854 pay periods, at \$100
4 per initial violation, and \$100 per subsequent violation, the PAGA penalty is [\$100 x 497 aggrieved
5 employees] + [\$100 x (14,854 – 497)] = **\$1,485,400.00**

6 c. PAGA for Overtime / Regular Rate of Pay: for 265 employees with 2,315
7 pay periods, at \$100 per initial violation, and \$100 per subsequent violation, the PAGA penalty is
8 \$100 x 256 aggrieved employees + [\$100 x (2,315–256)] = **\$231,500.00**

9 d. PAGA for Meal Breaks: for 426 employees with 11,040 pay periods, (\$100 x
10 426 aggrieved employees) + [\$100 x (11,040–426)] = \$634,700 x 45.4% = **\$1,104,000.00**

11 e. PAGA for Rest Breaks: for 471 employees with 14,041 pay periods, at \$100
12 per initial violation, and \$100 per subsequent violation, the PAGA penalty is (\$100 x 471 aggrieved
13 employees) + [\$100 x (14,041 – 471)] = **\$1,404,100.00**

14 f. PAGA for Wage Statement Violation: for 497 employees with 14,854 pay
15 periods, at \$100 per initial violation, and \$100 per subsequent violation, the PAGA penalty is [\$100
16 x 497 aggrieved employees] + [\$100 x (14,854 – 497)] = **\$1,485,400.00**

17 g. PAGA for Sick Pay: for 245 employees with 1,133 pay periods, at \$100 per
18 initial violation, and \$100 per subsequent violation, the PAGA penalty is [\$100 x 245 aggrieved
19 employees] + [\$100 x (1,133–245)] = **\$113,300.00**

20 h. PAGA For Waiting Time Penalty: PAGA for Waiting Time Penalty: 694
21 Former Employees x \$100 violation = \$69,400

22 i. Total PAGA exposure: **\$5,836,100.00**

23 *See, Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation
24 rate applies until the employer is notified that it is violating a Labor Code provision:

25 41. Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and
26 hour class action cases that settle, which are the overwhelming majority of such cases, very little of
27 the total settlement is paid to PAGA penalties in order to maximize payments to class members.

1 *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to
2 approve class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*,
3 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily
4 approving \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and
5 recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3,
6 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily
7 approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v.*
8 *Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27,
9 2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
10 \$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575,
11 at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total
12 settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821,
13 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties
14 out of a total settlement amount of \$6,900,000). In these settlements, the parties generally maximize
15 statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS
16 169057, 2012 WL 5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement
17 amount of \$2,500,000).

18 42. However, Defendant asserts a number of credible defenses to Plaintiff's claims. First,
19 the vast majority of these penalties derive from the underlying wage and hour violations discussed
20 above, which Defendant vigorously disputes. *See, e.g., Green v. Lawrence Service Co.* (C.D. Cal.
21 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, *5, n.5 (explaining that a
22 PAGA claim's success was determined by the merits of its underlying claims). Defendant also
23 maintains that given its good faith defenses, this Court would exercise its discretion to substantially
24 reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims.
25 Defendant further alleges that none of the violations would be deemed knowing and intentional as
26 there is no evidence to suggest Defendant intentionally violated the Labor Code and that
27 Defendant's policies and procedures demonstrate that Defendant acted in good faith in regards to

1 paying the Class Members all wages due. For these reasons, Defendant argues the Court would
2 drastically reduce any award of PAGA penalties as “confiscatory.” *See, Thurman v. Bayshore*
3 *Transit Mgmt., Inc.*, (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties).
4 Indeed, courts while considering the issue have refused to “stack” PAGA penalties. *See*
5 *Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec.
6 19, 2018) (approving PAGA penalty reduction to \$5 per pay period); *accord Atempa v.*
7 *Pedrazzani* (2018) 27 Cal.App.5th 809. California’s appellate courts have held that “[u]ntil the
8 employer has been notified that it is violating a Labor Code provision (whether or not the
9 commissioner or court chooses to impose penalties), the employer cannot be presumed to be
10 aware [of the violation]” and therefore, until a Court or the Commissioner issues a finding of a
11 violation, the initial \$100 violation rate applies for each pay period in which the alleged violation
12 occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord*
13 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10,
14 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are not
15 subject to heightened penalties for subsequent violations unless and until a court or commissioner
16 notifies the employer that it is in violation of the Labor Code”). Therefore, Plaintiff discounted the
17 maximum PAGA exposure by 55% for risk of losing on the merits, and an additional 40% to
18 account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of
19 \$1,575,747.00.

20 **THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

21 43. Using these estimated figures for each of the claims described above, Plaintiff
22 predicted that the potential recovery for the Class would be approximately \$4,489,837.03. The
23 proposed settlement of \$700,000 represents approximately 16% of the reasonably forecasted
24 recovery for the Class. Preliminary approval is appropriate since the Settlement will provide
25 significant monetary relief to Class Members, which is consistent with what Class Counsel believes
26 could have been recovered had the case proceeded through trial. The proposed settlement will
27 provide tangible, monetary compensation for hotly disputed claims desperately needed by Class

Members now more than ever due to the looming economic recession. See, *Dunleavy v. Nadler* 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Class Members at trial”); *Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery).

44. Further, the average Individual Settlement Amount of \$580.54 is in align with more than the average payments achieved in other wage and hour class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class has had the opportunity to opt-out or object.

The Experience Views of Counsel

45. Plaintiff is represented by competent, experienced counsel who possess experience in

⁴ See e.g., *Bercea v. AE Retail West* (Sacramento County Super. Ct. May 9, 2012) Case No. 34-2012-00123947 (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.* (San Bernardino County Super. Ct. Jan. 2, 2009) Case No. BC335018 (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.* (C.D. Cal. May 14, 2007) Case No. CV05-3241 FMC-JWJx (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, (San Bernardino County Super. Ct. July 23, 2010) Case No. BC392297 (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.* (E.D. Cal. Dec. 17, 2008) Case No. 2:06-CV-02674-JAM-DAD (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions where the gross recoveries per class member were less than \$90...[T]he Court finds that the results achieved are good”); and *Williams v. Centerplate, Inc.* (S.D. Cal. Aug. 26, 2013) Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (average recovery of approximately \$108).

1 wage-and-hour class actions. Class Counsel conducted an in-depth review of Defendant's policies
2 and Class Members' records with the assistance of a retained expert, and drew on their extensive
3 experience in similar cases in preparing their analysis to assess the strengths and weaknesses of
4 Plaintiff's case. The Settlement was also reached with the assistance of an experienced and respected
5 wage and hour class action mediator. These factors strongly supports preliminary approval of the
6 Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

7 46. I have been practicing law for nearly fourteen-years; my legal partner and I at E&L,
8 LLP (EbraLavi) almost exclusively practice in the area of labor and employment law. Class Counsel
9 is experienced to evaluate the class claims and to evaluate settlement versus trial on a fully
10 informed basis, and to evaluate the viability of the defenses. I have also handled numerous cases in
11 all aspects of employment and labor law, including state and federal actions, including wrongful
12 termination, retaliation, and harassment actions. Super Lawyers Magazine has also selected me as a
13 Southern California Rising Star in 2014 through 2021, and Super Layer in 2023 and 2024. For this
14 matter, Class Counsel conducted an in-depth review of Defendant's relevant policies and Class
15 Members' records with the assistance of a retained expert, and drew on their extensive experience
16 in similar cases to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also
17 reached with the assistance of an experienced and respected wage and hour class action mediator.
18 This factor strongly supports preliminary approval of the Settlement.

19 47. Class Counsel made every effort to litigate this action in an efficient and cost-
20 effective manner. Given my years of experience and the focus of my practice, if I were to charge
21 for this type of work by the hour, my current hourly rate would be \$650 per hour. This rate is the
22 firm's current billing rate and is supported by the experience in these types of cases. Based on the
23 information I have, I believe that our rates are reasonable and appropriate fees for Los Angeles
24 attorneys with comparable experience.

25 48. **Attorneys' Fees and Costs:** Class Counsel will also apply for an attorneys' fees
26 award of one-third of the GSA, which is currently estimated to be \$233,333.33 and up to \$25,000 in
27 verified costs reimbursement. *See Settlement*, ¶ 3.2.2. Plaintiff submits the requested fee is fair

1 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely
2 contingent fee basis. Class Counsel has incurred substantial attorney fees conducting pre-filing
3 investigation, analyzing Plaintiff's claims, engaging in informal discovery, conducting research,
4 reviewing Defendant's documents and policies, analyzing Class Members' relevant records while
5 working with a retained expert to create a comprehensive damages model, preparing for and
6 attending a full day mediation, negotiating and preparing the long-form Settlement Agreement,
7 preparing this Motion, and otherwise litigating the case. Class Counsel expects to expend additional
8 attorney time in attending the hearing on this Motion, overseeing the notice process and fielding
9 questions from Class Members, preparing the final approval papers, and attending the Final
10 Approval hearing.

11 49. California courts recognize an appropriate method for awarding attorneys' fees in
12 class actions is to award a percentage of the "common fund" created as a result of a settlement. See
13 e.g., *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund
14 method survives in California class action cases"). Class Counsel's request for fees of one-third of
15 the GSA is well within the range of reasonableness, and indeed is considered the typical rate for
16 common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to
17 50%, depending on the circumstances of the case. *See*, 4 Newberg on Class Actions § 14.6 (4th Ed.
18 2013). Moreover, as part of the final approval motion, Class Counsel will provide the necessary
19 information regarding hours reasonably expended and Class Counsel's reasonable hourly rate to
20 allow the Court to perform a lodestar cross-check. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th
21 480, 503-506.

22 50. The settlement also provides for reimbursement of costs reasonably incurred not to
23 exceed \$25,000. *See* Settlement, ¶ 3.2.2. To date, Class Counsel has incurred approximately
24 \$14,251.00 in litigation costs. Counsel anticipates additional charges pertaining to filing the instant
25 motion and motion for final approval, and supplement filings requested by the Court. As part of
26 Plaintiff's motion for final approval, Class Counsel will request only the reimbursement of costs
27 reasonably incurred supported by declaration with an itemized cost sheet. The costs Plaintiff seeks
28

are the types of costs routinely approved by courts⁵.

51. **Administrative Costs:** Phoenix Settlement Administrators settlement administration fees have been quoted at no more than \$9,000.00 after having factored in the hourly costs associated with administering the settlement. *See* Declaration of Jodey Lawrence (“Lawrence Decl.”). This request is reasonable in light of the proposed class size of approximately 673 Class Members and the costs and expenses associated with administering the notices and distributing the awards.

52. **Class Representative Service Payment:** Plaintiff will separately apply for a Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for his service to the Class. *See* Settlement, ¶3.2.1. As will be fully briefed at the time of final approval, Plaintiff’s requested Class Representative Service Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Class, including providing substantial factual information and documents to Class Counsel, attending multiple in person and virtual meetings with Class Counsel to discuss the claims and theories at issue in the litigation, reviewing and discussing policies produced by Defendant, actively participating in the prosecution of the putative class claims, discussing the claims and case strategy during the full-day mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case.

53. **PAGA Payment:** The Parties have agreed to designate \$25,000.00 of the GSA as PAGA penalties, of which \$18,750.00 (75%) will be paid to the LWDA, with the remaining \$6,250.00 (25%) part of the NSA for distribution to the Class. *See* Settlement, ¶¶ 3.2.5. The estimated total number of employees during the PAGA period and the estimated total pay periods therein are 497 and 14,854, respectively. This \$25,000.00 represents approximately 3.6% of the

⁵ *See, e.g., Harris v. Marhoefer* 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre* (N.D. Cal. 2011), No. 05-03759 CW, 2011 WL 825713, at * 3 (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* 460 F.3d 1253, 1258-59 (9th Cir. 2006)(legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

1 \$700,000.00 Gross Settlement Amount and is consistent with the zero to two percent range for
2 PAGA claims approved by Courts⁶.

3 54. Further, neither the Court nor a jury has made a factual finding of a violation of any
4 Labor Code provision such that approving an amount that is less than the statutory maximum is
5 appropriate. As discussed above (and without waiving the mediation privileges and confidentiality
6 agreements), the Parties specifically negotiated the payment, like the other terms of the settlement,
7 and ultimately agreed to resolve the PAGA claim for \$25,000.00 at mediation. Approval of less
8 than the statutory maximum is appropriate in this case because Defendant expressly denies and
9 continues to deny any liability. *See* Settlement, ¶ 2.1,1; 12.1.

10 55. **Payroll Taxes and Individual Settlement Payment Tax Allocation:** The
11 Settlement provides that the employer's share of payroll taxes shall be paid separately from, and in
12 addition to, the Gross Settlement Amount. Settlement, ¶ 3.1. Moreover, the Parties have agreed to
13 allocate 10% of the Individual Settlement Payments as unpaid wages and 90% as penalties and
14 interest. Settlement, ¶ 3.2.4.1.

15 56. **Uncashed Funds:** The Settlement provides that Class Members will have 180 days
16 from the date the Settlement Administrator mails the checks to negotiate them. *See* Settlement, ¶
17 4.4.1. The funds from any uncashed checks shall be transferred by the settlement administrator to
18 the California Controller's Unclaimed Property Fund in the name of the Class Member thereby
19 leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384,

20 ⁶ *See e.g., In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009) No. CV 07-0118 BTM
21 (JMAx), 2009 WL 995864, at *1 (approving PAGA settlement of 2 percent, or \$14,000); *Hopson v.*
22 *Hanesbrands, Inc.* (S.D. Cal. Apr. 13, 2009) No. CV 08-0844 EDL, 2008 WL 3385452, at *1
23 (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm'n Cases*, 186 Cal. App.
24 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims
25 under which no money was allocated to the PAGA claims); *Poisson v. Dispatch Transportation,*
26 *Inc., et al.*, Case No. RIC1504851, Riverside Superior Court, Hon. Craig Reimer presiding
27 (approving \$14,000 PAGA allocation in a \$970,000 settlement); *Edmiston v. Loma Linda*
28 *University Medical Center – Murrieta, et al.*, Case No. MCC 1300610, Riverside Superior Court,
Hon. Craig R Riemer presiding (approving \$10,000 PAGA allocation in a \$912,500 settlement);
Chu v. Wells Fargo Investments, LLC (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL
672645 at *1 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013).

1 subdivision (b). *See* Settlement, ¶ 4.4.3. After final distribution of the settlement funds, Class
2 Counsel will submit a declaration regarding disbursement of Settlement funds. *See* Settlement, ¶
3 7.8.6. The declaration shall state the date the checks were mailed, the total number of checks mailed
4 to Class Members, the average amount of those checks, the number of checks that remain uncashed,
5 the total value of those uncashed checks, the average amount of the uncashed checks, and the nature
6 and date of the disposition of those unclaimed funds.

7 57. **Released Parties and Scope of Release:** The scope of the release includes all claims
8 and factual allegations that were or could have been alleged in the in the operative Complaint, as set
9 forth more fully in the Settlement Agreement. *See* Settlement, ¶ 5.2. Therefore, the language
10 expressly confirms that the scope of the release is limited to the claims which could have been
11 asserted based on the same allegations as set forth in the Operative Complaint. *Id.*, ¶ 2.1. This type
12 of release is permissible in wage and hour class action settlements such as this one.

13 **THE SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

14 58. Preliminary approval of the Settlement is also warranted because there are no
15 deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed
16 for the PAGA allocation, the Class Representative Service Payment, and Class Counsel’s attorneys’
17 fees and costs, are all reasonable and appropriate based on the facts of this case. Further, the Parties
18 utilized the judicially crafted LASC Model Class Action and PAGA Settlement Agreement and
19 Class Notice, giving rise to the presumption that the terms of the settlement are fair and
20 comprehensive.

21 **THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
22 **NOTICE TO CLASS MEMBERS**

23 59. This Court should order distribution to the Class of the proposed Class Notice by
24 U.S. Mail, postage prepaid, using last known mailing address information provided by Defendant.
25 *See* Settlement, ¶ 7.4 *et seq.* This manner of giving notice is the “best notice practicable” under the
26 circumstances because it provides “individual notice to all members who can be identified through
27 reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff
28

1 proposes that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an
2 experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence
3 (“Lawrence Decl.”) and attached exhibits. Class Members’ addresses will be ascertainable through
4 Defendant’s personnel and payroll records, which Defendant will provide to Phoenix within Fifteen
5 (15) days of preliminary approval of the Settlement. *See* Settlement, ¶ 4.2. Within fourteen (14)
6 days of receipt of the class list information, Phoenix will run the addresses through the United
7 States Postal Service Notice of Change of Address database (which provides updated addresses for
8 any individual who has moved in the previous four years and has notified the U.S. Postal Service of
9 a forwarding addresses) and mail the notices to Class Members. *See* Settlement, ¶ 7.4.2. To the
10 extent that any notices are returned, Phoenix will perform a “skip trace” to track any Class
11 Member’s current mailing address. *See* Settlement, ¶ 7.4.3.

12 60. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
13 because it advises Class Members of the nature of the claims, basic contentions and denials of the
14 parties and the key terms of the Settlement, the 60-day deadline to opt-out or object to the
15 Settlement and the procedures by which to do so, explains the recovery formula and expected
16 recovery amount for each Class Member, and advises them that they will be bound by the terms of
17 the Settlement if they do not opt-out. *See* Lavi Decl., Exh. 1, Exh. A. Class Members to whom
18 Notice Packets are re-sent after having been returned as undeliverable to the Settlement
19 Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response
20 Deadline has expired, whichever is later, to mail a Request for Exclusion, challenge or objection.
21 *See* Settlement, ¶¶ 7.4.4., 7.5.1., 7.6, 7.7.2. The proposed Notice will be sent in Spanish and
22 English. Settlement ¶ 7.4.2. The proposed Class Notice will also notify Class Members of the final
23 approval hearing date and provides the contact information for Class Counsel. The proposed Notice
24 further provides that relevant case documents, including the final judgment, and any changes to the
25 final approval hearing date and time will be posted on the Settlement Administrator’s website. This
26 manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-
27 effective method of reaching Class Members.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed April 9, 2025, at Beverly Hills, California.

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David Lavi

EXHIBIT “1”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Darin Wright (“Plaintiff”) and Defendant Tierra Del Sol Foundation (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party”.

1. DEFINITIONS

1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant, captioned *Darin Wright vs. Tierra Del Sol Foundation*, initiated on October 11, 2023, and pending in Superior Court of the State of California, County of Los Angeles as Case No. 23STCV24812.

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

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

1.4 “Aggrieved Employee” means all current and former non-exempt employees who were employed by Defendant during the PAGA Period.

1.5 “Class” means all current and former non-exempt employees who were employed by Defendant in California at any time during the Class Period.

1.6 “Class Counsel” means E&L, LLP.

1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8 “Class Data” means Class Member and Aggrieved Employees identifying information in Defendant’s possession including name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

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

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

1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.13 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.14 “Court” means the Superior Court of California, County of Los Angeles.

1.15 “Defendant” means Defendant Tierra Del Sol Foundation.

1.16 “Defense Counsel” means Landegger Verano & Davis.

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

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

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

1.20 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.21 “Gross Settlement Amount” means \$700,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

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

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

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

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

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

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

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

1.29 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant within the State of California as a non-exempt, hourly paid employee, for at least one day during the PAGA Period.

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

1.31 “PAGA Notice” means Plaintiff’s November 9, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.32 “PAGA Penalties” means the total amount of PAGA civil penalties (\$25,000.00) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and the 75% to the LWDA (\$18,750.00) in settlement of PAGA claims.

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

1.34 “Plaintiff” means Darin Wright, the named plaintiff in the Action.

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

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

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

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

1.39 “Released Parties” means: Defendant Tierra del Sol Foundation and each of its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, joint employers, assigns, and joint venturers.

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

1.41 “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

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

1.43 “Workweek” means any week during which a Class Member worked for Defendant within the State of California as a non-exempt, hourly paid employee for at least one day, during the Class Period.

1.44 “Class Period” means the period beginning October 11, 2019, and continuing through November 19, 2024

1.45 “PAGA Period” means the period beginning November 9, 2022, and continuing through November 19, 2024.

2. RECITALS

2.1 On October 11, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) failure to pay wages for all hours of work at the legal minimum wage rate in violation of Labor Code §§1194 and 1197; (2) failure to pay proper overtime wages for daily overtime worked, all hours worked, and failure to include additional remuneration when calculating overtime wages in violation of Labor Code §§510, 1194, and 1198; (3) failure to authorize or permit meal periods in violations Labor Code §§512 and 226.7; (4) failure to authorize or permit rest periods in violation of Labor Code §226.7; (5) failure to pay all accrued and vested vacation/paid time off wages in violation of Labor Code §227.3; (6) failure to provide sick pay in violation of Labor Code §246; (7) failure to indemnify employees for employment-related losses and expenditures in violation of Labor Code §2802; (8) failure to timely pay earned wages during employment in violation of Labor Code §204; (9) failure to timely pay all earned wages and final paychecks due at time of separation of employment in violation of Labor Code §§201, 202, and 203; (10) failure to provide complete and accurate wage statements in

violation of Labor Code §226; and (11) unfair business practices, in violation of Business and Professions Code §17200, et seq.

2.1.1 On February 16, 2024, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for (1) failure to pay wages for all hours of work at the legal minimum wage rate in violation of Labor Code §§1194 and 1197; (2) failure to pay proper overtime wages for daily overtime worked, all hours worked, and failure to include additional remuneration when calculating overtime wages in violation of Labor Code §§510, 1194, and 1198; (3) failure to authorize or permit meal periods in violations Labor Code §§512 and 226.7; (4) failure to authorize or permit rest periods in violation of Labor Code §226.7; (5) failure to pay all accrued and vested vacation/paid time off wages in violation of Labor Code §227.3; (6) failure to provide sick pay in violation of Labor Code §246; (7) failure to indemnify employees for employment-related losses and expenditures in violation of Labor Code §2802; (8) failure to timely pay earned wages during employment in violation of Labor Code §204; (9) failure to timely pay all earned wages and final paychecks due at time of separation of employment in violation of Labor Code §§201, 202, and 203; (10) failure to provide complete and accurate wage statements in violation of Labor Code §226; (11) unfair business practices, in violation of Business and Professions Code §17200, et seq.; and (12) Civil Penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §2698, et seq. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2 On May 23, 2024, the Parties participated in an all-day mediation presided over by David Phillips, Esq., which led to this Agreement to settle the Action.

2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.4 Prior to mediation, Plaintiff obtained through informal discovery, including a sampling of time and pay data from Defendant, Plaintiff’s time and payroll records, information related to class size and composition, Employee Handbooks during the relevant time period, inclusive of Defendant’s wage and hour policies and practices, and a sample of their on-duty meal waivers. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5 The Court has not granted class certification.

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

3. **MONETARY TERMS**

3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$700,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount shall be paid by Defendant in two (2) installments: (1) the first installment payment in the amount of \$350,000.00 shall be due 30 days after the Court's Final Approval of the Settlement or May 23, 2025, whichever date comes later; and (2) the second installment in the amount of \$350,000.00 shall be due six months (180 days) after the first payment due date. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$233,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$25,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$15,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$15,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported by the Administrator on an IRS W-2 Form. The 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported by the Administrator on IRS 1099 Forms. The Administrator shall be responsible for issuing tax forms to the Participating Class Members. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Notwithstanding the treatment of the payments to each Participating Class Member, none of the payments called for in this Agreement, including the Wage Portions of the Individual Class Payments, are to be treated as earnings, wages, pay or compensation for the purposes of any applicable benefit or retirement plan, nor do any payment under this Agreement extend or alter Class Members' or Aggrieved Employees' period of employment for any purposes.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00 are to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments. Each Aggrieved Employee shall receive an Individual PAGA Payment regardless of whether the individual is a Participating Class Member or Non-Participating Class Member.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. 100% of

the PAGA Penalties are allocated as penalties and not as wages. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. The Administrator shall be responsible for issuing tax forms to each Aggrieved Employee.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1 Class Workweeks and Aggrieved Employee PAGA Pay Periods. Based on a review of its records, Defendant estimates there are 685 Class Members who collectively worked a total of 78,737 Workweeks, and 497 Aggrieved Employees who worked a total of 14,854 PAGA Pay Periods as of May 23, 2024 (i.e., as of the date the Parties participated in mediation)

4.2 Class Data. Not later than 15 business days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. The Gross Settlement Amount shall be paid by Defendant in two (2) installments: (1) the first installment payment in the amount of \$350,000.00 shall be due 30 days after the Court's Final Approval of the Settlement or May 23, 2025, whichever date comes later; and (2) the second installment in the amount of \$350,000.00 shall be due six months (180 days) after the first payment due date. Defendant will deposit funds in the amount equal to the Gross Settlement Amount and the employer's share of payroll taxes owed on the Wage Portions of the Individual Class Payments, to pay (1) the Class Members per the terms of the final settlement agreement, (2) court approved Attorneys' Fees and Costs, Settlement Administration Expenses, and the Service Award, and (3) the PAGA Settlement Amount to be paid to the LWDA and the Aggrieved Employees into an interest-bearing account, through the Settlement Administrator. Any interest accrued will be distributed to the Class Members except that if final approval is reversed on appeal, then Defendant is entitled to prompt return of the principal and all interest accrued. Defendant's payment obligations with respect to the Gross Settlement Amount and the employer's share of payroll taxes shall be met upon initiating the electronic transfer of funds in the amounts provided for in this Settlement Agreement pursuant to the Settlement Administrator's instructions. In the event of an unsuccessful electronic transfer of funds, the Parties agree to cooperate in good faith to resolve the issues.

4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses

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

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

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure §384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

5.1 Plaintiff's Release. In addition to the Released Class Claims and Released PAGA Claims described below, Plaintiff, individually and on behalf his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,

release and discharge Released Parties from all claims, transactions, occurrences, demands, rights, liabilities and causes of action of every nature and description whatsoever, whether known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Settlement Agreement in connection with his employment or the termination thereof ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to those rights that as a matter of law cannot be waived, including, but not limited to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 Released Class Claims by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims, demands, rights, liabilities, and causes of action, both potential and actual, that were or may have been raised in the Operative Complaints and/or the PAGA Notice, including claims under Labor Code sections 201, 202, 203, 204, 208, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 245 *et seq.*, 510, 512, 558, 558.1, 1174, 1174.5, 2698, 2699, 2699.3, 2699.5, 2800, 2802; the California Industrial Welfare Commission Wage Orders; Cal. Code Regs., tit. 8, sections 3395, 11010, and 11000, *et seq.*; California Business and Professions Code section 17200, *et seq.*; unpaid wages; unpaid or underpaid overtime, including but not limited to claims for failing to properly calculate the regular rate of pay for purposes of paying overtime; failure to include bonus pay or other remuneration when calculating the regular rate of pay; and all claims relating to meal or rest and recovery periods; unpaid meal or rest and recovery premiums; underpaid meal or rest and recovery premiums; failure to authorize and permit meal breaks and rest breaks; failure to pay sick pay at the proper rate; failure to timely pay all wages due during employment; failure to timely pay all wages due upon termination and separation of employment; failure to provide accurate and complete wage statements; failure to keep complete and accurate payroll records; unfair competition based on the foregoing; unlawful business practices based on the foregoing; fraudulent business practices based on the foregoing; waiting time penalties based on the foregoing; civil penalties based on the foregoing; statutory penalties based on the foregoing; interest; fees; costs; and any other claims that may have been raised in Plaintiff's Operative Complaints ("Released Claims"). Except as set forth in Paragraph 5.3 of this Agreement,

Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Released PAGA Claims by Aggrieved Employees: All Aggrieved Employees, including Plaintiff, regardless of whether they are Participating Class Members or Non-Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Action that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint, the PAGA Notice and ascertained in the course of the Action, including without limitation, claims for PAGA penalties pursuant to Labor Code §§210, 226.3, 558, 1197.1, and 2699 in connection with unpaid minimum wage and/or overtime claims, including but not limited to claims for failing to properly calculate the regular rate of pay for purposes of paying overtime, impermissible and/or detrimental rounding, automatic meal period deductions, failure to include bonus pay when calculating the regular rate; alleged meal or rest and recovery period claims, meal or rest and recovery premium claims; failure to pay meal and rest period premium payments, failure to authorize and permit all meal breaks and rest breaks, failure to pay accrued vacation, failure to pay sick pay at the proper rate, failure to pay all minimum and overtime wages for hours worked, failure to indemnify employees for all necessary business expenditures, failure to pay all wages due twice monthly, failure to pay all wages due upon termination and separation of employment, failure to provide accurate and itemized wage statements violations, civil penalties based on the foregoing, interest, fees, costs, and any other claims that may have been raised in Plaintiff's Operative Complaint and/or the PAGA Notice. ("Released PAGA Claims"). The foregoing releases shall be binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall entitle Defendant to bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. Eligible PAGA Members will receive their share of the employee portion of the PAGA Penalties and will be deemed to have released any claims arising out of PAGA, regardless of whether they opt-out from the release of their Class claims.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to cooperate in the preparation and filing of a motion for preliminary approval ("Motion for Preliminary Approval").

6.1 No Potential Conflicts. Defendant and Defense Counsel are not aware of any potential conflicts of interest with the Administrator. In addition, Defendant and Defense Counsel are not aware of any other pending matter or action asserting claims that would be extinguished or adversely affected by the Settlement.

6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and

Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; 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 Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve as Class Representative and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (vi) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), and this Agreement (Labor Code section 2699, subd. (1)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, Aggrieved Employees, and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. No later than 90 days after the full execution of this Agreement, or upon such other date determined by the Court, Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator. If it is not possible to schedule a hearing on preliminary approval of the Settlement within ninety (90) calendar days of the date of this Agreement, the parties agree to schedule that hearing at the first available date thereafter. The Parties agree that Plaintiff’s motion for preliminary approval will seek, *inter alia*, certification of a class, and that this certification is for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification will have no force or effect. The Parties further agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the standard applied to contested certification motions and that this Settlement will not be admissible in this or any other proceeding as evidence that (i) a class should be certified as Plaintiff proposed or (ii) Defendants are liable to Plaintiff or the Class as Plaintiff alleged in the Action; and/or (iii) that Plaintiff and his counsel will not argue waiver of any rights to compel individual arbitration, to strike the putative class claims, and to stay the Action pending individual arbitration.

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

7. SETTLEMENT ADMINISTRATION

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses, including without limitation, calculating the Individual Class Payments to be issued to Participating Class Members, Individual PAGA Payments to be issued to Aggrieved Employees, sending notices and translating same to Spanish, preparing all checks and mailings, establishing a qualified settlement fund and holding the various payments from Defendant comprising the Gross Settlement Amount and employer payroll taxes. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number and Tax Reporting. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to applicable local, state and federal tax authorities. The Administrator will be responsible for calculating the applicable taxes and withholdings, including the employer payroll taxes owed on the Individual Class Payments, and for paying all taxes and withholdings to the applicable taxing or governmental authorities with the necessary reports, and submitting copies to Defense Counsel. The Administrator shall issue Participating Class Members IRS Form W-2 for the Wage Portions of the Individual Class Payments, IRS Form 1099 for the Non-Wage Portions, and IRS Form 1099 to Aggrieved Employees for Individual PAGA Payments, as described in this Agreement.

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

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

7.5 Requests for Exclusion (Opt-Outs).

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

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

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all

benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 5.2 *et seq.* and 5.3 *et seq.* of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Non-Participating Class Members who are Aggrieved Employees will receive an Individual PAGA Payment and are barred from pursuing PAGA Penalties in accordance with Paragraph 5.3 of this Agreement.

7.6 Challenges to Calculation of Workweeks and PAGA Pay Periods. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

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

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

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

7.7.4 Should a Participating Class Member submit both a Request for Exclusion (Opt-out) and an Objection to Settlement, the Class Member will be treated as a Non-Participating Class Member who submitted only a Request For Exclusion.

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

7.8.1 Email Address and Toll-Free Number. The Administrator will maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, and emails.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than seven (7) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); and (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion.

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

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

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

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

all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8 CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of May 24, 2024, (1) there are 685 Class Members and 78,737 Workweeks during the Class period, and (2) there were 497 Aggrieved Employees who worked 14,854 Pay Periods during the PAGA Period. If the actual number of Workweeks worked during the Class Period by Class Members eligible to participate in the Settlement be greater than 10% of this estimate (i.e., greater than 86,610), then Defendant has the option to either: (1) agree to increase the Gross Settlement Amount on a proportional basis above 10% (i.e., if there is an 11 % increase in the number of Workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%); or (2) elect to end the Class Period and PAGA Period on an earlier date at Defendant's discretion in order to limit the covered workweeks to 10% more than the estimate provided in lieu of paying an increase to the Gross Settlement Amount.

9. DEFENDANT'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten-percent (10%) of the total of all Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its selection to withdraw not later than 14 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person, by videoconference, or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

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

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

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaints have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. Further, nothing in this Agreement should be construed as an admission by Defendant that any of the allegations or facts in the Operative Complaints are accurate. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does grant

Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

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

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

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

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

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and

authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of mediator David Phillips and/or the Court for resolution. The Parties will evenly share in the costs of the mediator, and shall each bear their own attorneys' fees and other costs incurred..

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

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

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

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

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

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

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

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

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

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

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

12.18

To Plaintiff: David Lavi, Esq.
Email: dlavi@ebralavi.com
Arie Ebrahimian, Esq.
Email: arie@ebralavi.com
E&L, LLP
8889 W. Olympic Blvd., 2nd Floor
Beverly Hills, California 90211
Telephone: (213) 213-0000
Facsimile: (213) 213-0025

To Defendant, Tierra Del Sol Foundation:

Alfred Landegger, Esq. (State Bar No. 84419)
Email: alfred@landeggeresq.com
Roxana E. Verano, Esq. (State Bar No. 186837)
roxana@landeggeresq.com
LANDEGGER VERANO & DAVIS, ALC
15760 Ventura Blvd., Suite 1200
Encino, California 91436
Telephone: (818) 986-7561
Facsimile: (818) 986-5147

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

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

Plaintiff

Counsel for Plaintiff, the Class, and the Aggrieved Employees
E&L, LLP

Darin Wright

David Lavi, Esq.

Dated: _____

Dated: _____

Defendant, Tierra Del Sol Foundation

Counsel for Defendant
Landegger Verano & Davis, ALC

DocuSigned by:


Tierra Del Sol Foundation



Roxana Verano, Esq.

Printed Name: Rebecca Lienhard

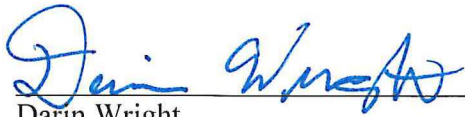
Dated: 12/19/2024

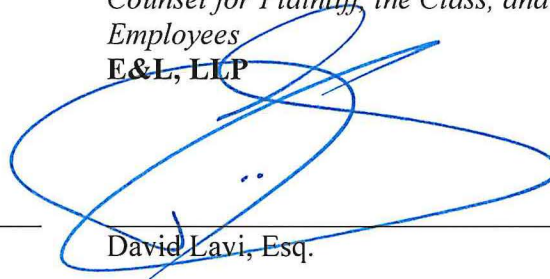
Dated: 12/20/2024

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Plaintiff

Counsel for Plaintiff, the Class, and the Aggrieved Employees
E&L, LLP


Darin Wright


David Lavi, Esq.

Dated: 12/20/2024

Dated: 12/20/24

Defendant, Tierra Del Sol Foundation

Counsel for Defendant
Landegger Verano & Davis, ALC

Tierra Del Sol Foundation

Roxana Verano, Esq.

Printed Name: _____

Dated: _____

Dated: _____

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

Darin Wright vs. Tierra Del Sol Foundation, et al.
Case No.: 23STCV24812

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

You may be eligible to receive money from a consolidated class action and Private Attorney General Act lawsuit, *Darin Wright vs. Tierra Del Sol Foundation* (“Action”), for alleged wage and hour violations. The Action was filed by former Tierra Del Sol Foundation employee Darin Wright (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of non-exempt hourly paid employees (“Class Members”) who worked for Tierra Del Sol Foundation (“Defendant”) during the “Class Period,” defined as October 11, 2019 through November 19, 2024 and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt hourly paid employees who worked for Defendant in the State of California during the “PAGA Period,” defined as November 9, 2022 through November 19, 2024 (“Aggrieved Employees”).

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

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

The above estimates are based on Defendant’s records showing that **you worked [REDACTED] Workweeks** during the Class Period and **you worked [REDACTED] Pay Periods** during the PAGA Period. If you believe the estimates of your workweeks or payroll periods are inaccurate, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant and the Released Parties defined in the Agreement.

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

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendant and the Released Parties defined in the Agreement.

- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant. You cannot opt out of the proposed Settlement of the PAGA claims. If you are an Aggrieved Employee, you will remain eligible for an Individual PAGA Payment regardless of whether you opt-out of the Class Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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

You Can Participate in the [REDACTED] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [REDACTED]	The amount of your Individual Class Payment depends on how many Workweeks you worked at least one day during the Class Period. The amount of your Individual PAGA Payment (if any) depends on how many Pay Periods you worked at least one day during the PAGA Period. The number of Class Period Workweeks and number of PAGA Pay Periods you worked according to Defendant's records are stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge them by [REDACTED]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action alleges that Defendant failed to pay minimum wage, overtime wage and failure to include additional remuneration when calculating overtime rate of pay, provide meal periods and rest breaks, pay all accrued and vested vacation/paid-time-off at time of separation, provide sick pay, reimburse business expenses, wages due during employment, pay wages at time of separation, provide accurate itemized wage statements, and engaged in unfair business practices. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA. Plaintiff is represented by attorneys in the Action:

David Lavi, Esq.
Email: dlavi@ebralavi.com

Arie Ebrahimian, Esq.
Email: arie@ebralavi.com

E&L, LLP
8889 W. Olympic Blvd., 2nd Floor
Beverly Hills, California 90211
Telephone: (213) 213-0000
Facsimile: (213) 213-0025
("Class Counsel")

Tierra Del Sol Foundation strongly denies violating any laws or failing to pay any wages and further denies all the allegations in the Action. It contends it complied with all applicable laws and that its employees were paid properly under state and federal law.

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

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits.

In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

- a. Defendant Will Pay \$700,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement in two (2) installments: (1) the first installment payment in the amount of \$350,000.00 shall be due 30 days after the Court’s Final Approval of the Settlement or May 23, 2025, whichever date comes later; and (2) the second installment in the amount of \$350,000.00 shall be due six months (180 days) after the first payment due date. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
- b. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - i. Up to \$233,333.33 (33.3% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- ii. Up to \$10,000.00 as a Class Representative Service Payment for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- iii. Up to \$15,000.00 to the Administrator for services administering the Settlement.
- iv. Up to \$25,000.00 for PAGA Penalties, allocated 75% to the LWDA and 25% in Individual PAGA Payments to each individual Aggrieved Employee based on such employee's PAGA Period Pay Periods.

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

- c. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- d. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 10% ("Wage Portion") to taxable wages and 90% ("Non-Wage Portion") to interest and penalties of each Individual Class Payment. The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms by the Administrator. Defendant will separately pay the employer payroll taxes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

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

If these monies are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

- f. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [REDACTED] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her legal representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.
- g. You cannot opt out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and cannot assert PAGA claims against Defendant and the Released Parties defined in the Agreement based on the PAGA Period facts alleged in the Action. This is because PAGA claims are brought as a representative of the State of California and the State determines how such claims are resolved.
- h. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant and the Released Parties defined in the Agreement.
- i. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- j. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the "Released Class Claims" released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and the Released Parties defined in the Agreement for wages based on the Class Period facts as alleged in the Action and resolved by this Settlement. All Aggrieved Employees will be barred from asserting PAGA claims against Defendants and the Released Parties defined in the Agreement, whether or not they exclude themselves from the Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims, demands, rights, liabilities, and causes of action, both potential and actual, that were or may have been raised in the Operative Complaints and/or the PAGA Notice, including claims under Labor Code sections 201, 202, 203, 204, 208, 210, 216, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 245 *et seq.*, 510, 512, 558, 558.1, 1174, 1174.5, 2698, 2699, 2699.3, 2699.5, 2800, 2802; the California Industrial Welfare Commission Wage Orders; Cal. Code Regs., tit. 8, sections 3395, 11010, and 11000, *et seq.*; California Business and Professions Code section 17200, *et seq.*; unpaid wages; unpaid or underpaid overtime, including but not limited to claims for failing to properly calculate the regular rate of pay for purposes of paying overtime; failure to include bonus pay or other remuneration when calculating the regular rate of pay; and all claims relating to meal or rest and recovery periods; unpaid meal or rest and recovery premiums; underpaid meal or rest and recovery premiums; failure to authorize and permit meal breaks and rest breaks; failure to pay sick pay at the proper rate; failure to timely pay all wages due during employment; failure to timely pay all wages due upon termination and separation of employment; failure to provide accurate and complete wage statements; failure to keep complete and accurate payroll records; unfair competition based on the foregoing; unlawful business practices based on the foregoing; fraudulent business practices based on the foregoing; waiting time penalties based on the foregoing; civil penalties based on the foregoing; statutory penalties based on the foregoing; interest; fees; costs; and any other claims that may have been raised in Plaintiff's Operative Complaints (the "Released Class Claims"). Except for Released PAGA Claims being released by Aggrieved Employees, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

The "Released Parties" means: Defendants and their respective parents, subsidiaries and related entities, and each of their respective officers, directors, shareholders, members, persons, employees, agents, servants, representatives, attorneys, insurers, re-insurers, assigns, and affiliates and any and all other entities with whom they have been, are now, or may hereafter be affiliated, specifically including but not limited to Tierra Del Sol Foundation, and any of their affiliated companies, predecessors, successors and assigns, as well as their past or present officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees.

- k. Aggrieved Employees' PAGA Bar. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting any of the "Released PAGA Claims" against Defendant and the Released Parties defined in the Agreement, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant and

the Released Parties defined in the Agreement based on the facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Release for Participating and Non-Participating Class Members is as follows:

All Aggrieved Employees, including Plaintiff, regardless of whether they are Participating Class Members or Non-Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Action that were alleged, or reasonably could have been alleged, based on the claims asserted in the Operative Complaint, the PAGA Notice and ascertained in the course of the Action, including without limitation, claims for PAGA penalties pursuant to Labor Code §§210, 226.3, 558, 1197.1, and 2699 in connection with unpaid minimum wage and/or overtime claims, including but not limited to claims for failing to properly calculate the regular rate of pay for purposes of paying overtime, impermissible and/or detrimental rounding, automatic meal period deductions, failure to include bonus pay when calculating the regular rate; alleged meal or rest and recovery period claims, meal or rest and recovery premium claims; failure to pay meal and rest period premium payments, failure to authorize and permit all meal breaks and rest breaks, failure to pay accrued vacation, failure to pay sick pay at the proper rate, failure to pay all minimum and overtime wages for hours worked, failure to indemnify employees for all necessary business expenditures, failure to pay all wages due twice monthly, failure to pay all wages due upon termination and separation of employment, failure to provide accurate and itemized wage statements violations, civil penalties based on the foregoing, interest, fees, costs, and any other claims that may have been raised in Plaintiff's Operative Complaint and/or the PAGA Notice. ("Released PAGA Claims"). The foregoing releases shall be binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall entitle Defendant to bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. To the extent any aggrieved employee attempts to assert or asserts any individual PAGA claims for purported violations during the PAGA period, all such claims are deemed to be foreclosed by this Agreement.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- a. Individual Class Payments. The "Net Settlement Amount" is calculated by deducting from the Gross Settlement Amount the amounts approved by the Court for the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the

total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

- b. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.
- c. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Workweeks and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you

based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Darin Wright vs. Tierra Del Sol Foundation*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 court days before the Settlement Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Class Representative Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Court's website [REDACTED].

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

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

Should a Participating Class Member submit both a Request for Exclusion (Opt-out) and an Objection to Settlement, the Class Member will be treated as a Non-Participating Class Member who submitted only a Request For Exclusion.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] in Department 11 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel

before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [REDACTED]'s website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below or consult the Superior Court website by going to <http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 23STCV24812. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

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

Class Counsel:

David Lavi, Esq. (State Bar No. 277604)

Email: dlavi@ebralavi.com

Arie Ebrahimi, Esq. (State Bar No. 274961)

Email: arie@ebralavi.com

E&L, LLP

8889 W. Olympic Blvd., 2nd Floor

Beverly Hills, California 90211

Telephone: (213) 213-0000

Facsimile: (213) 213-0025

("Class Counsel")

Settlement Administrator:

Name of Company:

Phoenix Class Action Administration Solutions

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the California Controller's Unclaimed Property Fund for

instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

DO NOT TELEPHONE THE JUDGE ABOUT THE SETTLEMENT

EXHIBIT “2”

E&L, LLP
8889 W. OLYMPIC BLVD
2ND FLOOR
BEVERLY HILLS, CA 90211
TEL: 213.213.0000
FAX: 213.213.0025
WWW.EBRALAVI.COM
DAVID LAVI, ESQ.
DIRECT: 213.213.0023



WRITER'S EMAIL
dlavi@ebralavi.com

November 9, 2023

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE §2699.3**

To: California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
Via Online Submission Only

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Certified Mail Number: 7020 1290 0001 7358 8412

Tierra Del Sol Foundation
c/o Rebecca Morrill Lienhard
9919 Sunland Blvd
Sunland, California 91040
Certified Mail Number: 7019 2970 0000 6942 6439

Tierra Del Sol Foundation
Attn: Human Resources
9919 Sunland Blvd
Sunland, California 91040
Certified Mail Number: 7019 2970 0000 6942 4794

From: Darin Wright, on behalf of himself and other current and former aggrieved, California-based, hourly non-exempt employees of Tierra Del Sol Foundation

c/o David Lavi, Esq.
Arie Ebrahimian, Esq.
E&L, LLP
8889 West Olympic Boulevard, 2nd Floor
Beverly Hills, California 90211

Factual Statement and Theories of Labor Code Violations

Aggrieved employee Darin Wright (“Employee”) was formerly employed by Tierra Del Sol Foundation (“Employers”) as an hourly non-exempt employee from in or around August 2000 to on or about September 11, 2023.

1. Failure to Pay the Minimum Wage Rate of Pay for All Hours Worked

Employee maintains that during his employment, Employers failed to pay him and other current and former aggrieved, California-based, hourly non-exempt employees with compensation at the minimum wage rate of pay for all the hours that they worked in violation of Labor Code §1194 and 1197. Labor Code §1197 provides, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Labor Code §1194 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.”

Employee maintains that during his employment, he and other current and former aggrieved, California-based, hourly non-exempt employees worked more hours per day than Employers credited them for having worked based on the following:

- Employers maintained a policy, practice, and/or procedure whereby Employers paid Employee and other non-exempt employees similarly situated for their scheduled hours instead of properly keeping track of their time. As a result, Employers failed to properly track the actual hours Employee and other non-exempt employees worked.
- Employers maintained a policy, practice, and/or procedure whereby Employers “rounded” down or “shaved” Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ total daily hours worked to the benefit of Employers. Employee and other current and former aggrieved, California-based, hourly non-exempt employees were not paid for this time;
- Employers maintained a policy, practice, and/or procedure whereby Employers required Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ to line up and wait to undergo and undergo Covid-19 related screenings, including but not limited to a nose swab, prior to clocking-in for their day, and therefore not paid for this time.
- Employers required Employee and similarly situated employees to use a corporate phone for the purposes of clocking-in and out. However, the corporate phones would not allow Employee and similarly situated employees to clock-in at their jobsite, but would have to drive to the proximity of their corporate office to clock-in and out. Employee and similarly situated employees would work off-the-clock while with their clients, and were not paid for this time.

Employers' aforementioned policy, practice, and/or procedure results in time each day in which Employee and other current and former aggrieved, California-based, hourly non-exempt employees are subject to the control of employers' without being compensated for that time.

Based on these violations, Employee intends to seek civil penalties pursuant to the Private Attorney General Act ("PAGA"), Labor Code §2698, et seq. and Labor Code §1197.1, subds. (a)(1)-(2), on behalf of the Labor and Workforce Development Agency ("LWDA") against Employers if authorized to file a representative action on behalf of the State of California. Employee will also seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such minimum wages for all hours worked rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i)).

2. Failure to Pay Overtime Wages for Overtime Hours Work and/or Failure to the Proper Overtime Rate of Pay Due to Employers' Failure to Include All Remuneration When Calculating the Regular Rate of Pay for Purposes of Paying Overtime Wages

Employee maintains, Employer failed to pay him and other current and former aggrieved, California-based, hourly non-exempt employees for the overtime hours that they worked at their overtime rate of pay. Labor Code §510 provides:

"Eight 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."

Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

Finally, Labor Code §1194 provides, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

As stated above, Employee maintains that Employers failed to pay him other current and former aggrieved, California-based, hourly non-exempt employees for all of the hours that they worked based on the following:

- Employers maintained a policy, practice, and/or procedure whereby Employers paid Employee and other non-exempt employees similarly situated for their scheduled hours instead of properly keeping track of their time. As a result, Employers failed to properly track the actual hours Employee and other non-exempt employees worked.
- Employers maintained a policy, practice, and/or procedure whereby Employers “rounded” down or “shaved” Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ total daily hours worked to the benefit of Employers. Employee and other current and former aggrieved, California-based, hourly non-exempt employees were not paid for this time;
- Employers maintained a policy, practice, and/or procedure whereby Employers required Employee and other current and former aggrieved, California-based, hourly non-exempt employees’ to line up and wait to undergo and undergo Covid-19 related screenings, including but not limited to a nose swab, prior to clocking-in for their day, and therefore not paid for this time.
- Employers required Employee and similarly situated employees to use a corporate phone for the purposes of clocking-in and out. However, the corporate phones would not allow Employee and similarly situated employees to clock-in at their jobsite, but would have to drive to the proximity of their corporate office to clock-in and out. Employee and similarly situated employees would work off-the-clock while with their clients, and were not paid for this time.

Employers’ aforementioned policy, practice, and/or procedure results in time each day in which Employee and other current and former aggrieved, California-based, hourly non-exempt employees are subject to the control of employers’ without being compensated for that time. To the extent that the foregoing unpaid time resulted Employee and other current and former aggrieved, California-based, hourly non-exempt employees being subject to the control of Employers when they worked more than eight (8) hours in a workday or 40 hours in a workweek, Employers failed to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees for all of the overtime hours that they worked at their overtime rate of pay.

Additionally, when Employers did pay overtime wages to Employee and other current and former aggrieved, California-based, hourly non-exempt employees, Employer failed to pay the overtime wages at the proper overtime rate of pay due to Employers’ failure to include all remuneration when calculating the overtime rate of pay. Specifically, Employers maintained a policy, practice, and/or procedure that entirely excluded additional remuneration Employee and other current and former aggrieved, California-based, hourly non-exempt employees earned including, but not limited to, bonus compensation, commissions, and/or incentives when calculating Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ regular rate of pay for the purpose of paying overtime. As a result, Employee is informed and believes that Employers failed to pay him and other current and former aggrieved, California-based, hourly non-exempt employees for all overtime hours worked and failed to pay overtime wages at their proper overtime rate of pay.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. and Labor Code §§558 and/or 1197.1, subds. (a)(1)-(2), on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to pay overtime wages for overtime hours worked and/or failure to pay overtime wages at the proper overtime rate of pay, Employee will also seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such overtime wages and/or failure to pay them at the proper overtime rate of pay rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i).

3. Failure to Authorize or Permit Meal Periods in Violation of Labor Code §§512 and 226.7 and/or Failure to Pay Meal Period Premiums at the Proper Rate of Pay Due to Employers' Failure to Include All Remuneration When Calculating the Regular Rate of Pay for Purposes of Paying Meal Period Premiums

Employee maintains that during his employment, Employers failed to maintain compliant meal period policies and/or pay proper meal period premiums. California law requires an employer to provide an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage Order 4, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code §226.7 provides that if an employee does not receive a required meal or rest period that "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 meal or rest period is not provided."

Employee maintains that Employers failed to authorize or permit him and other current and former aggrieved, California-based, hourly non-exempt employees to take compliant meal periods based on the following:

- Employers maintained a policy, practice, and/or procedure whereby Employers failed to authorize or permit Employee and other current and former aggrieved, California-based, hourly non-exempt employees' to (1) take first meal periods prior to the end of the fifth hour of work; and/or (2) take second meal periods when they worked shifts over 10 hours

Further, Employee alleges Employers maintained a policy, practice, and/or procedure whereby they failed to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees a meal period premium wage of one additional hour of pay at their regular rate of compensation for each work day that Employers failed to authorize or permit all required meal periods, timely meal periods, meal periods of at least 30 minutes, uninterrupted meal periods, and/or duty free meal periods as required by Labor Code §226.7.

Additionally, on occasions Employers did pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees a “premium” wage for late, missed, short, or on-premise meal periods, Employers failed to pay it at one additional hour of pay at Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ regular rate of compensation. Specifically, Employers maintained a policy, practice, and/or procedure that entirely excluded additional remuneration Employee and other current and former aggrieved, California-based, hourly non-exempt employees earned including, but not limited to, bonus compensation, commissions, and/or incentives, when calculating Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ regular rate of pay for the purpose of paying meal period premiums.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers’ failure to authorize or permit meal periods and/or failure to pay meal period premiums at the proper rate of pay due to failure to include all remuneration when calculating the regular rate of pay or pay meal period premium wages, Employee will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such meal period premiums or failure to pay meal period premiums at the proper rate rendered Employee’s and other current and former aggrieved, California-based, hourly non-exempt employees’ pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i).

4. Failure to Authorize or Permit Rest Periods in Violation of Labor Code §226.7 and/or Failure to Pay Rest Period Premiums at the Proper Rate of Pay Due to Employers’ Failure to Include All Remuneration When Calculating the Regular Rate of Pay for Purposes of Paying Rest Period Premiums

Employee maintains that during her employment, Employers failed to maintain compliant rest period policies. California law requires that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...” Wage Order 4, §12. Employees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7. Additionally, the rest period requirement “obligates employers to permit-and authorizes employees to take-off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.” Wage Order 4, §12; Lab. Code §226.7.

Employee maintains that Employers failed to authorize or permit him and other current and former aggrieved, California-based, hourly non-exempt employees to take compliant meal periods based on the following:

- Despite that California law requires Employer to provide Employee with one 10 minute rest break when an employee's work shift is in excess of 3.5, a second 10 minute rest break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10 hours, Employer regularly failed to do so. As a result, Employee and similarly situated non-exempt, employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not taken at all.

Additionally, on occasions Employers did pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees a "premium" wage for late, missed, short, rest periods, Employers failed to pay it at one additional hour of pay at Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' regular rate of compensation. Specifically, Employers maintained a policy, practice, and/or procedure that entirely excluded additional remuneration Employee and other current and former aggrieved, California-based, hourly non-exempt employees earned including, but not limited to, bonus compensation, commissions, and/or incentives, when calculating Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' regular rate of pay for the purpose of paying rest period premiums.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to authorize or permit rest periods and/or failure to pay rest period premiums at the proper rate of pay due to failure to include all remuneration when calculating the regular rate of pay or pay rest period premium wages, Employee will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such rest period premiums or failure to pay rest period premiums at the proper rate rendered Employee's and other current and former aggrieved, California-based, hourly non-exempt employees' pay calculations inaccurate and in violation of Labor Code §226(e)(2)(B)(i).

5. Failure to Indemnify Employees for Employment-Related Losses and Expenses in Violation of Labor Code §2802

Employee maintains that during his employment, Employer failed to indemnify him and other current and former aggrieved California-based non-exempt hourly employees for all necessary expenditures or losses incurred by them in the discharge of their duties. Labor Code §2802(a) requires, "An 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..."

Employer employed policies and procedures which ensured Employee and other current and former aggrieved California-based non-exempt hourly employees would not receive indemnification for necessary expenditures incurred as result of their employment with Employer. Employer's aforementioned policies,

practices, and/or procedures resulted in Employee and other current and former aggrieved California-based non-exempt hourly employees not receiving indemnification for employment-related expenditures in compliance with California law.

For these reasons, Employee will seek both restitution for himself and other current and former aggrieved California-based non-exempt hourly employees for Employer's violations of Labor Code §2802 and will seek civil penalties under PAGA, Labor Code §2698, et seq., on behalf of the LWDA against Employer if authorized to file a representative action on behalf of the State of California.

6. Failure to Pay Accrued and Vested Vacation Wages

Employers had a policy and/or procedure of providing its employees, including Employee and other current and former aggrieved California-based non-exempt hourly employees, with paid vacation time and/or personal time off ("Vacation/PTO"). Vacation/PTO wages are deferred wages that vest once accrued. Labor Code §227.3 provides that Employers must pay its employees, including Employee and others similarly situated, all unused vested vacation/PTO at the time of termination at the employees' final rate of pay.

Employers had a vacation policy in which Plaintiff and other similarly situated employees accrued vacation/PTO wages. However, Employee maintains that Employer terminated Employee and other similarly situated employees without paying them the full amount of their earned vacation/PTO wages, in violation of California law, and employed policies and procedures which ensured Employee and those similarly situated would not receive their accrued and vested vacation/PTO wages upon termination.

7. Failure to Timely Pay Earned Wages During Employment

In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

Employer's aforementioned policies, practices, and/or procedures resulted in their failure to pay Employee and similarly situated employees their earned wages within the applicable time frames outlined in Labor Code §204.

8. Failure to Provide Accurate Wage Statements

Based on the aforementioned derivative violations for failure to provide complete and accurate wage statements pursuant to Labor Code §§2698, et seq. and 226.3, Employee will seek recovery of civil penalties

on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California.

9. Failure to Provide Sick Pay At The Regular Rate

In California, sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging total wages excluding overtime over 90-days. (Lab. Code §246(1).) Employee maintains that Employers failed to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees, sick pay at the correct rate. In addition to hourly wages, Employee and other current and former aggrieved, California-based, hourly non-exempt employees, received compensation in addition to hourly wages, including but not limited to, bonus compensation, commissions, and/or incentives, but those additional amounts were not included when calculating sick pay wages. By failing to pay Employee and other current and former aggrieved, California-based, hourly non-exempt employees, for sick pay at the correct rate, Employers willfully violated Labor Code §246.

10. Failure to Timely Pay All Wages Due at the Time of Termination/Resignation

As a result of the aforementioned violations of the Labor Code, Employee was not paid his final wages in a timely manner as required by Labor Code §203.

Employee is informed and believes that other current and former aggrieved, California-based, hourly non-exempt employees who separated from Employers, whether voluntarily or involuntarily, were not paid at the time of Employee's separation of employment, including (a) minimum wage (b) overtime hours for overtime hours worked and/or remuneration when calculating the regular rate of pay for purposes of paying overtime wages; (b) meal period premiums and/or remuneration meal period premiums; (c) rest period premiums and/or remuneration rest period premiums; (d) proper sick pay; and (e) vacation/PTO, as required by Labor Code §§201, 202, and 203.

Based on these violations, Employee intends to seek civil penalties pursuant to the PAGA, Labor Code §2698, et seq. on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California.

11. Civil Penalties

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an aggrieved employee, Employee has standing to, and intends to, on behalf of the LWDA, pursue civil penalties against Employers for any and all other violations Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under the PAGA may also bring PAGA claims against the employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Employee, as an "aggrieved" employee affected by at least one Labor Code violation may,

November 9, 2023

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and hereby does, pursue penalties on behalf of the LWDA for unrelated Labor Code violations by Employers.

Conclusion

Employee intends to file a putative wage and hour class action as well as a representative action pursuant PAGA concerning his wage claims as warranted by Employers' violations of Labor Code §§201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and the IWC Wage Orders.

This letter is being sent to you as an inquiry into whether the LWDA wishes to investigate my client's allegations for any civil penalties associated with the Employers' alleged violations of the Labor Code.

Thank you for your assistance and cooperation in his matter. Please contact me at the above-listed information should you have any questions.

Very truly yours,

E&L, LLP

David Lavi, Esq.

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [David Lavi](#)
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, November 9, 2023 8:53:34 AM

11/9/2023

LWDA Case No. LWDA-CM-993185-23
Law Firm : E&L, LLP
Plaintiff Name : DARIN WRIGHT
Employer: TIERRA DEL SOL FOUNDATION
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

EXHIBIT “3”

From: [DIR PAGA Unit](#)
To: [David Lavi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Wednesday, April 9, 2025 12:57:24 PM

04/09/2025 12:57:01 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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