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Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DEE DEVER, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

RESCUE 1 FINANCIAL, LLC, a California
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 30-2023-01360010-CU-OE-CXC
*[Assigned to Hon. Melissa McCormick, Dept
CX104, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA ACTION
SETTLEMENT**

Hearing

Date: July 3, 2025

Time: 2:00 p.m.

Dept.: CX104

Complaint filed: November 8, 2023

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff Dee Dever ("Plaintiff") in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 300 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest PAGA-only case in
17 California's history - a \$12.5 million-dollar court approved settlement, which followed extensive
18 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
19 company (*Garcia v. Macy's*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed.

25 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
26 the May 2023 issue of Consumer Attorney's of Southern California. Additionally, over the last
27 five consecutive years, I have been selected by my peers as a "Super Lawyer" in Employment
28 Litigation.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested but productive mediation, Plaintiff and Defendant Rescue 1 Financial, LLC (collectively, the “Parties”) entered into a Class Action and PAGA Action Settlement Agreement and Release of Claims (the “Settlement Agreement”) resolving the wage and hour claims of the putative class, which is attached hereto as **Exhibit A**. The Settlement Agreement seeks to release and discharge Defendant from the claims brought against it in exchange for Defendant’s agreement to pay \$490,000 on a non-reversionary, non-claims made basis (each Class Member will receive their share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of current and former sales employees of Defendant in California who were eligible to receive commission pay as an “Inside Sales” exempt employee at any time during the Class Period of November 8, 2019, through October 1, 2024 (the “Class” or “Class Members”).¹ Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$25,000, the Settlement Administrator costs of \$8,000, a Service Payment to Plaintiff of \$5,000, and PAGA Penalties of \$20,000, of which \$15,000 will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining \$5,000 will be paid to the Aggrieved Employees. After subtracting the agreed-upon deductions from the Settlement Amount, approximately \$268,666.67 will be available to pay the individual settlement amounts to approximately 500 Class Members who do not opt-out of the Settlement, as follows:

<i>Settlement Amount</i>	\$ 490,000.00
Attorneys’ Fees (1/3)	\$ 163,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 268,666.67

¹ Paragraph 6 of the Settlement Agreement includes an inadvertent and typographical error as it defined the “Class” to only include individuals that worked during the “PAGA Period.” That is inaccurate and the Parties seek approval of the settlement with the “Class” covering all relevant individuals during the “Class Period” as defined herein.

1 8. Assuming approximately 500 total Class Members employed during the Class
2 Period, each will receive approximately \$537.33 on average, the potential high payment is
3 \$1,963.52 for an employee who worked all 256 Workweeks during the Class Period (at \$7.67
4 per Workweek), and the lowest potential payment is \$7.67 for a short-term employee that only
5 worked one Workweek during the Class Period.

6 9. Each Class Member will receive the Class Notice, explaining the nature of the
7 case, and the process for participating, objecting and opting-out, and advising of their estimated
8 settlement payment and the number of Weeks they are credited with working during the Class
9 Period and PAGA Period (attached hereto as **Exhibit B**).

10 **PROCEDURAL BACKGROUND**

11 10. My office has performed considerable work and diligently investigated and
12 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
13 significant settlement fund for the benefit of the Class. We efficiently communicated and
14 exchanged information informally with Defense Counsel which enabled the Parties to
15 successfully settle the case. Because of the risks involved in litigating the case and the contested
16 legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this Settlement to be fair,
17 reasonable, and adequate.

18 11. After being retained by Plaintiff, we sent a November 7, 2023, letter to the
19 LWDA notifying it and Defendant that Plaintiff intended to pursue claims against Defendant
20 under the PAGA for violation of California Labor Code sections 200, 201, 202, 203, 204, 208,
21 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1,
22 1198, 1199, and 2802 ("LWDA Notice Letter"). The LWDA Notice Letter is attached hereto as
23 **Exhibit C**. We simultaneously sent a letter to Defendant requesting the production of his
24 personnel and timekeeping records to further evaluate the wage and hour claims.

25 12. The following day, Plaintiff filed a putative class action in the Orange County
26 Superior Court. Ultimately, the LWDA declined to assert jurisdiction over the PAGA Claims, so
27 on January 12, 2024, Plaintiff filed the operative first amended complaint (the "Complaint"),
28 adding PAGA Claims. The Complaint alleges Class Claims and PAGA Claims for: (1) failure to

1 pay minimum wages (2) failure to pay overtime wages; (3) failure to provide meal periods; (4)
2 failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to pay vested
3 vacation; (7) failure to timely pay wages upon separation of employment; (8) failure to provide
4 accurate itemized wage statements; (9) unfair and unlawful competition; and (10) claims for
5 PAGA penalties.

6 13. Defendant retained counsel, denied the allegations and began vigorously
7 defending the case, including arguing that Plaintiff was required to submit the matter to binding
8 arbitration and dismiss his class claims. However, before incurring significant costs and
9 expenses in protracted discovery and litigation, the Parties agreed to explore an early resolution
10 through mediation. In preparation for the mediation, the Parties informally exchanged
11 documents and information that allowed both sides to calculate the potential damages and
12 evaluate potential risk, including extensive policies and procedures pertaining to each claim
13 alleged, and statistics relating to the number of current and former employees and number of
14 shifts, workweeks, and pay periods. In this regard, Defendant provided a comprehensive pre-
15 mediation production of policy documents, employee handbooks, and a sampling of payroll and
16 timekeeping records which included over 3,500 PDF pages and over 4,400 rows of excel data.
17 This robust sampling enabled both Parties and their experts to take a deep dive into the claims.
18 During this process, Plaintiff's Counsel and their retained expert (Sean Berger of Berger
19 Consulting Group) evaluated the potential claims, risks, and defenses as to all similarly situated
20 employees.

21 14. On September 11, 2024, Plaintiff and Defendant participated in a full-day
22 mediation with Hon. Dalila Lyons (Ret.), who has a long history of handling Mandatory
23 Settlement Conferences for the LA Superior Court system, including for class actions and PAGA
24 cases, and who now serves as a private mediator. At the conclusion of mediation, the Parties
25 agreed to settle for the Settlement Amount and thereafter memorialized the terms of the
26 Settlement in a long-form settlement agreement. The Parties now seek the Court's preliminary
27 approval of the Settlement.

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1 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL’S INVESTIGATION**

2 15. The putative Class in this case consists of approximately 500 current and former
3 sales employees of Defendant in California who were eligible to receive commission pay as an
4 “Inside Sales” exempt employee at any time during the Class Period. Plaintiff alleged numerous
5 wage and hour violations on behalf of the Class. However, Defendant vigorously contested and
6 denied each of Plaintiff’s material allegations on the merits and as to the propriety of a class
7 action or PAGA representative action on behalf of the putative Class and allegedly Aggrieved
8 Employees. Notably, Defendant argued that Plaintiff and the Class Members each signed binding
9 and enforceable arbitration agreements that would defeat the Class claims (a claim that Plaintiff
10 disputed). Still, Plaintiff alleged numerous strong claims on behalf of the Class Members.

11 16. *First*, Plaintiff alleged that the Class Members were not paid all wages owed due
12 to three distinct violations. For example, Defendant paid the Class Members on an hourly basis
13 plus commission pay, yet Defendant failed to include earned commissions in the regular rate
14 calculations, leading to underpayments for overtime, vacation pay, and sick pay (under Labor
15 Code § 246). Additionally, Plaintiff alleged that he and the Class Members were required to
16 perform off-the-clock work each day due a computer-based timekeeping system that: (a) required
17 the Class to clock in *after* booting up the computer, logging in, and then opening the relevant
18 timekeeping program, and (b) after the shift, required the Class to clock out and then perform
19 various tasks to shut down the computer. Finally, Plaintiff alleged that Defendant used a
20 timekeeping system that recorded and separately paid for rest breaks, but Defendant paid for this
21 rest break time at the base rate of pay, even when those hours put the employee’s total hours
22 above the daily or weekly overtime threshold, leading to an underpayment of overtime hours.
23 However, Defendant vehemently opposed these claims, arguing that Defendant properly paid for
24 all hours worked and all overtime owed. And Defendant further argued that, as to the
25 commission and regular rate claims, those would fail because the Class Members were subject to
26 the “Inside Sales Exemption.”

27 17. *Second*, Plaintiff alleged that Plaintiff and Class Members were often subjected to
28 meal period and rest break violations due to a hectic workload and scheduling practice that did

1 not permit all such breaks. However, Defendant argued it provided and made all mandated
2 breaks available to the Class, and any employee who did not take a break did so of their own
3 volition. Thus, Defendant argued these claims were without merit because, for each violation, a
4 factfinder must determine why a break was noncompliant, because if it was by the employee's
5 choice, no liability attaches to Defendant. Additionally, Defendant pointed to the payroll and
6 timekeeping records to argue that, when a compliant break was not recorded, Defendant
7 complied with its obligations to pay the "premium" required by Labor Code § 226.7.

8 18. *Third*, Plaintiff alleged that Defendant required Class Members to incur necessary
9 business-related expenses and costs, such as home office expenses for remote employees,
10 without reimbursement. Defendant, however, argued it did not require the Class to incur any
11 expenses and, thus, it did not fail to reimburse any such expenses.

12 19. Finally, Plaintiff alleged a variety of other, derivative claims (all of which
13 Defendant disputed), such as the failure to timely pay wages each period (under Labor Code §
14 204), failure to timely pay all wages upon separation of employment (Labor Code §§ 201 – 203),
15 and failure to provide accurate itemized wage statements (Labor Code § 226), and claims under
16 PAGA. However, Defendant argued against the merits of each claim and, further, argued that
17 these type of "derivative" claims have no merit.

18 20. Nonetheless, the Parties concluded that further litigation of the Action would be
19 protracted and expensive, and that it is desirable that the Action be fully and finally settled in
20 order to limit further risk, expense and protracted litigation.

21 21. It should also be noted that the Parties have met and conferred and are unaware of
22 any related cases that may be affected by this Settlement.

23 **EVALUATION OF THE SETTLEMENT**

24 22. In preparation for mediation, Peter Carlson, an attorney with 11 years of
25 experience within my office, and I formulated a damages model based upon detailed data
26 obtained through informal discovery and information exchanges. The summary of the claims
27 below is based on calculations by our expert and us, and the risks that we potentially faced,
28 giving significant credit to the defenses that Defendant raised or would likely raise in further

proceedings. Following the informal exchange and other information provided by Defendant, we estimated the following data points through the date of mediation: (1) 420 Class Members, (2) 240 *former* Class Members for purposes of Labor Code § 203, (3) 32,000 workweeks, (4) 160,000 shifts worked, and (4) 4,500 wage statements during the PAGA Period. From these metrics, and when factoring in claim certification probabilities and liability probabilities, we formulated detailed damages models to value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

23. Here, there were several claims alleged by Plaintiff, including: (1) unpaid wage claims under various theories, (2) meal and rest break violations, (3) failure to reimburse business expenses, and (4) derivative claims for waiting time and wage statement penalties due to the other alleged violations.

Plaintiff's Unpaid Wage Claims

24. Plaintiff's unpaid wage claims had several distinct theories of liability, including: (1) alleged regular rate issues (*i.e.*, failure to include commission payments in overtime and other calculations), (2) Defendant's alleged failure to pay for computer boot-up time, and (3) Defendant's alleged failure to pay for rest breaks at the proper rate.

25. Based on Plaintiff's theories of recovery, we estimated the maximum value of the unpaid wage claims to be \$266,911. This includes a maximum potential value of \$92,288 for the regular rate claim based on the expert analysis showing approximately \$2.884 underpayment per workweek [$\$2.884 \text{ per week} \times 32,000 \text{ weeks} = \$92,288$]. It also includes \$103,200 for the computer boot-up claim based on 3 minutes of unpaid computer boot-up time per day occurring on 40% of shifts [$3 \text{ minutes per shift} \times 64,000 \text{ shifts} = 192,000 \text{ unpaid minutes} = 3,200 \text{ alleged unpaid hours}$] multiplied by the applicable rate of pay [$\$18.25$] plus \$14 for liquidated damages for unpaid wages under Labor Code § 1194.2 [$3,200 \text{ unpaid hours} \times \$32.25 = \$103,200$]. Finally, the total includes \$71,439 for the failure to pay the separate rest break pay at the appropriate overtime rate. This was calculated based on the expert's analysis of 0.2446 hours of *underpaid* overtime per week [$32,000 \text{ workweeks} \times 0.2446 \times \$9.125 \text{ (the one-half premium owed)} = \$71,423$].

1 26. However, Defendant vehemently opposed these unpaid wage claims on the merits
2 and as to the propriety of class certification. For example, as to the regular rate claim, Defendant
3 argued that there were no violations, and it would succeed on the merits because Class Members
4 were not entitled to overtime pay under the “Inside Sales Exemption.” Defendant also argued
5 that the application and analysis for the Inside Sales Exemption cuts against class certification it
6 would require an individualized analysis as to each Class Member (regarding whether the Inside
7 Sales Exemption was applicable to that person). Then, as to the claim relating to separate rest
8 break pay, Defendant argued that it properly calculated and paid all overtime owed (and, again,
9 argued that overtime was not owed because of the Inside Sales Exemption). Finally, for the
10 computer boot-up time claim, Defendant argued that claim had no merit because it accurately
11 paid for all hours worked and utilized a timekeeping system that paid employees (without
12 rounding or otherwise subtracting time). And Defendant argued that the Class Members had the
13 opportunity to review their timekeeping records and, further, that the Class Members signed
14 acknowledgments that the timeclock records were an accurate reflection of all hours worked. As
15 such, Defendant argued that there was no unpaid time and, even if there were, Defendant did not
16 have actual or constructive knowledge of such time and cannot be liable on the merits. Based on
17 these same theories, Defendant argued that class certification was improper for the computer
18 boot-up claim because proof of such claims would require mini-trials for every Class Member to
19 determine whether these alleged violations occurred, whether Defendant had actual/constructive
20 notice of the same (because, without notice, there can be no liability), and how much time was
21 spent during the computer boot-up process for each person and on each shift.

22 27. Based on these risks and defenses, we placed a 30% risk on the unpaid wage
23 claims at the class certification stage, and another 40% risk on the merits. This results in risk-
24 adjusted value of the unpaid wage claims of \$112,102. However, it must be stressed that this
25 risk analysis does not consider the impact of the arbitration agreement, and there was the very
26 real possibility of a \$0 value on these class claims if Defendant were to succeed on its motion to
27 compel arbitration since that would eliminate the class-wide unpaid wages claims entirely.

28 ///

Plaintiff's Meal and Rest Break Claims

28. Plaintiff also alleged meal and rest break claims against Defendant. Based on the pre-mediation analysis and investigation, and when incorporating violation rates from expert review of the timekeeping records and other evidence, Class Counsel estimated an 8.7% violation rate for meal periods (after crediting meal premiums paid) and a 13.8% violation rate for rest breaks (Defendant's timekeeping practices separately recorded rest breaks, so this figure was pulled from the sampling and based on shifts without compliant rest breaks recorded).

29. Based on these violation rates, we calculated the maximum potential value of the meal period claims as \$254,040 [160,000 shifts x 8.7% violation rate x \$18.25] and of the rest break claims as \$402,960 [160,000 shifts x 13.8% violation rate x \$18.25].

30. However, Defendant raised strong arguments in defense of these claims, both at class certification and on the merits. For instance, Defendant argued that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Moreover, Defendant argued that it paid the required premiums for any missed breaks, and this was supported by the sampling which showed meal premiums paid on approximately 15.3% of shifts. Thus, based on documents that Defendant provided prior to mediation, including its written meal and rest break policies, Plaintiff recognized that this defense carries weight because it establishes that Defendant properly provided the meal/rest breaks under *Brinker*. Therefore, when considering a motion for class certification or eventual dispositive motion, a ruling would be necessary to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. These issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 50% risk at the class certification stage for meal periods and rest breaks. These defenses also go toward the merits given the evidentiary question (and hurdle) of proving the number of meal and rest violations. As such, Plaintiff placed a 50% risk on the merits for meal breaks, and an additional 50% risk on the merits for rest breaks.

1 31. Based on the foregoing, we calculated the risk-adjusted value of the meal period
2 claims as \$63,510 and of the rest break claims as \$100,740. But, again, these claims also had a
3 possible (and realistic) value of \$0 if Defendant were to succeed on its threatened motion to
4 compel arbitration.

5 **Plaintiff's Claims for Failure to Reimburse Business Expenses**

6 32. Plaintiff also advanced a claim for failure to reimburse business expenses,
7 specifically arguing that Defendant required Plaintiff and the Class to work remotely (from
8 home) yet did not pay for or reimburse required expenses such as home internet services.

9 33. We calculated that the maximum value of this § 2802 claim was \$160,000 based
10 on an alleged \$10 in unreimbursed expenses for half of the Class-wide workweeks during the
11 Class Period [32,000 workweeks x 50% occurrence x \$10 = \$160,000].

12 34. In response, Defendant argued that it did not “require” Class Members to incur
13 any expenses and further argued that any expenses were not necessary to carry out their tasks for
14 the company. *Cassady v. Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 230 (the
15 elements of a § 2802 claim are: “(1) the employee [incurred expenses]; (2) the [expenses] were
16 incurred in direct consequence of the employee’s discharge of his or her duties, or obedience to
17 the directions of the employer; and (3) the [expenses] were necessary.” We assessed this defense
18 but believed that the case of *Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137
19 would control and Defendant would be liable. However, given Defendant’s defenses and the
20 possible difficulty meeting the evidentiary burden (of showing that expenses were incurred *and*
21 the amounts incurred), we assigned a 20% risk at class certification and a 30% risk on the merits.

22 35. This resulted in a risk-adjusted value for the expense claim of \$89,600. Like the
23 earlier sections, this risk-adjusted value does not factor in the risk of the class claims failing
24 entirely (and setting a \$0 value) if Defendant succeeded on its motion to compel arbitration.

25 **Plaintiff's Waiting Time Penalty Claim**

26 36. Plaintiff also alleged claims for waiting time penalties, which was a derivative
27 claim based on this theory: because Defendant did not pay *all wages owed* upon separation of
28 employment (because of the unpaid wage claims above), waiting time penalties attach.

1 37. Based on the expert analysis, we argued that 75% of *former* Class Members
2 would be entitled to waiting time penalties based on the unpaid wage theories. Thus, the
3 maximum potential value of the waiting time penalty claim was \$686,826, calculated by
4 multiplying the average daily pay of \$127.19 by 30 days and again multiplied by the 180 *former*
5 employees relevant to this claim [$\$127.19 \times 30 \times 180 = \$686,826$].

6 38. However, Defendant argued that the valuation (and appropriate discount for
7 negotiation purposes) had to account for the “derivative” nature of this claims since, if the other
8 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
9 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
10 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
11 prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203.
12 And, here, Defendant argued that there could not be a finding of a “willful” violation since it had
13 compliant written policies, and any deviations therefrom were inadvertent and unintentional.
14 And Defendant stressed that this is especially applicable where it believed that: (1) the regular
15 rate claim had no merit given the alleged application of the Inside Sales Exemption, and (2) it
16 otherwise paid for all hours worked. Thus, Plaintiff assigned a 30% risk at class certification and
17 an additional 40% risk on the merits.

18 39. In sum, the risk-adjusted value of Plaintiff’s waiting time penalty claim was
19 \$288,466. However, just as argued for the other claims, Plaintiff and the Class faced a very real
20 risk that this claim would have a \$0 value if these claims were litigated since Defendant would
21 attempt to eliminate the Class claims via a motion to compel arbitration.

22 **Plaintiff’s Wage Statement Claims**

23 40. Finally, Plaintiff alleged claims for wage statement violations. Like the waiting
24 time penalty claims, these were “derivative” in nature, *e.g.*, because Defendant did not properly
25 calculate and pay all wages owed each period, the wage statements were inaccurate.

26 41. In total, and based on the expert review of sampling and data, we calculated a
27 90% “derivative” violation rate on 4,500 total wage statements, leading to 4,050 alleged
28 violations and a maximum potential value of \$393,050 under Labor Code § 226(e) ($[\$50 \times 239$

“initial” violations] + [\$100 x 3,811 “subsequent” violations] = \$393,050).

42. Defendant opposed these claims, arguing that they were not proper since they were “derivative” as opposed to “direct” wage statement violations (*i.e.*, because these claims were entirely derivative of the claims above, they only had merit if the claims for unpaid wages or meal/rest breaks were successful). Additionally, Defendant argued that the wage statements did not violate Labor Code § 226 and even if there was a “technical” violation, that Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements. And this was especially true given the decision looming from the California Supreme Court in *Naranjo*, which held the following as to “derivative” wage statement violations: “We now conclude that if an employer reasonably and in good faith believed that it was providing a complete and accurate wage statement in compliance with the requirements of [§ 226], then it has not knowingly and intentionally failed to comply with the wage statement law.” *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065. Based on these facts and this case law, we applied a 40% risk at class certification and another 40% risk on the merits for wage statement claims.

43. We thus calculated the risk-adjusted value of the wage statement claim as \$141,498. And at the risk of being overly repetitive, I again point out that this analysis does not factor in the large risk that attached to Defendant’s threatened motion to compel arbitration (since, if Defendant succeeded, these claims could not proceed on a class basis).

44. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Unpaid Wage Claims	\$	112,102
• Meal and Rest Break Claims	\$	164,250
• Expense Reimbursement Claim	\$	89,600
• Waiting Time Penalty Claims	\$	288,466
• <u>Wage Statement Claims</u>	<u>\$</u>	<u>141,498</u>
• Total Risk Adjusted Penalties and Damages	\$	795,916

1 45. Thus, the reasonableness of the settlement is apparent from the fact that the
2 Settlement is 61.6% of the risk-adjusted class damages and penalties.

3 46. Then, as to the PAGA claims, the analysis and valuation acknowledged that
4 courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a
5 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and
6 oppressive, or confiscatory.” Labor Code § 2699(e)(2). Under this discretionary authority,
7 many courts have greatly reduced PAGA claims where, such as here, the company raised several
8 good faith arguments that, if successful, would have defeated the claims (such as the Inside Sales
9 Exemption, compliant written policies, and so forth). *See, e.g., Carrington v. Starbucks Corp.*
10 (2018) 30 Cal.App.5th 504 (approving of trial court applying only \$5 per violative pay period);
11 *Fleming v. Covidien Inc.* (C.D. Cal. 2011) 2011 WL 7563047 (82% reduction in PAGA
12 penalties); *Aguirre v. Genesis Logistics* (C.D. Cal. 2013) 2013 WL 10936035 (72% reduction in
13 PAGA penalties). Defendant also argued against the merits of the underlying claims and
14 particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil
15 penalty claims and rendered any such penalties as uncertain. Moreover, Defendant took the
16 position that Plaintiff would not be entitled to “stack” more than one PAGA civil penalty per
17 employee per pay period (regardless of whether there was one Labor Code violation or five).
18 Without conceding ground on this “stacking” defense, Plaintiff and her counsel acknowledged
19 the possibility that a court may rule that only \$100 (total) per pay period was available in PAGA
20 penalties, regardless of the number of violations. With these considerations, defenses, and risks
21 in mind, the Parties believe – in sum – that the PAGA penalties payable under the settlement are
22 fair and reasonable given only 4,500 PAGA periods at mediation; as such, the settlement is fair
23 and reasonable given the claim-specific risks, especially where it is *more* than the amount
24 awarded in *Carrington* after trial and prevailing on the merits.

25 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

26 47. The Settlement was the product of extensive arm’s length negotiations, facilitated
27 by an experienced mediator. Though cordial and professional, the settlement negotiations were
28 adversarial and non-collusive in nature. The Settlement reached is the product of substantial

1 effort by the Parties and their counsel. Although we believed that there was a possibility of
2 certifying the claims, we recognized the potential risk, expense, and complexity posed by
3 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
4 on the damages awarded, and/or on an appeal that can take several more years to litigate.

5 48. The Settlement will result in a fair payment to each Class Member based on the
6 percentage of Workweeks each Class Member worked during the Class Period. As set forth
7 hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on
8 behalf of the Class Members and worked to achieve a resolution of the claims to maximize the
9 recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the
10 significant risks attendant with further litigation described above and weighing them against the
11 benefits of a known compromise and settlement as set forth in the Settlement Agreement,
12 settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class
13 Members, and is a fair and reasonable resolution of the claims alleged.

14 49. Plaintiff's Counsel brought to bear a great deal of experience in negotiating the
15 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary
16 discovery and investigation, making it possible to exercise informed judgment throughout the
17 settlement process, including significant document review (e.g. documents pertaining to Fleet
18 Services' policies and procedures, personnel documents, among others), and conducted an
19 extensive analysis of the detailed class-wide data provided by Defendant.

20 50. Based on my experience in other cases, including wage and hour matters, I
21 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
22 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
23 settlement at this time is in the best interests of the Class. The Settlement provides each Class
24 Member with compensation for the alleged violations when viewed in relation to the costs and
25 risks inherent in obtaining class certification and proceeding to trial.

26 51. Plaintiff's Counsel, as well as Defendant's Counsel, fully endorse the terms and
27 conditions of the Settlement as set forth in the abovementioned Settlement Agreement.
28

1 52. Of course, the Settlement Amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendant's asserted
3 defenses. Nevertheless, the Settlement provides for fair and adequate payments to the Class
4 Members, with no reversion to Defendant.

5 **THE REQUESTED SERVICE PAYMENT**

6 53. Plaintiff is seeking a service award of \$5,000 in exchange for his service to the
7 class, as set forth in his Declaration and the Motion.² Plaintiff came forward in an effort to
8 effectuate a policy and practice change that benefitted all other Class Members, and to recover
9 unpaid wages. He assumed significant risk in bringing this litigation – namely, had he lost, he
10 would have been ordered to pay Defendant's costs.

11 54. Plaintiff provided invaluable assistance to my office and the Class in this case,
12 including providing factual background for the Class Complaint; reviewing the litigation
13 documents; providing information and documents about Defendant's policies and practices;
14 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
15 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
16 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
17 the reasons why he believes that the service award should be approved.

18 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
19 **REQUESTED FEES AND COSTS**

20 55. As set forth above, I have over 300 class and representative actions, have been
21 appointed as class counsel and have successfully resolved over half of those cases, and many
22 others remain pending and will successfully resolve in the future.

23 56. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
26 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
27 those expenditures.

28 ² Plaintiff has also separately resolved individual FEHA and released claims against Defendant.

1 57. It is my experience that attorney fee awards of one-third of a common fund
2 settlement is the standard in California. In this case, Plaintiff’s Counsel agreed to seek one-third
3 of the Settlement Amount for attorneys’ fees. Defendant and its counsel do not oppose this fee
4 request. The fee is further warranted because it is within the range of reasonableness typically
5 awarded in class actions. The litigation costs are reasonably capped at \$25,000 and will be based
6 on the actual amount of costs incurred at the time of final approval.

7 **SETTLEMENT ADMINISTRATOR**

8 58. The Parties request that the Court appoint Phoenix Settlement Administrators to
9 serve as the Settlement Administrator. Phoenix Settlement Administrators is experienced in
10 administering class action settlements, and has provided a proposal to administer this Settlement
11 for a total of \$8,000, which is attached hereto as **Exhibit D**.

12 **SUBMISSION TO THE LWDA**

13 59. Plaintiff has concurrently submitted the motion, declaration, and all exhibits
14 (including the Settlement Agreement) to the LWDA in accordance with Labor Code §
15 2699(1)(2). The proof of submission is attached hereto as **Exhibit E**.

16 **EXHIBITS AND CONCLUSION**

17 60. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
18 “A.”

19 61. The proposed Notice Packet (including Exclusion and Objection Forms) is
20 attached as Exhibit “B.”

21 62. True and correct copies of the notice letters we submitted to the LWDA are
22 attached as Exhibit “C.”

23 63. Phoenix Settlement Administrator’s proposal to administer the Settlement is
24 attached hereto as Exhibit “D.”

25 64. The LWDA’s confirmation of receipt of this Motion and all Declarations/Exhibits
26 is attached hereto as Exhibit “E.”

27 65. For the foregoing reasons, it is respectfully requested that the Court grant
28 preliminary approval of the Settlement as being fair, reasonable, and in the best interests of the

1 Class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
2 payment to the Class Representative.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed on June 2, 2025, at Riverside, California.

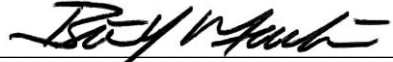
5 By: 
6 Brian J. Mankin, Esq.

EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DEE DEVER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

RESCUE 1 FINANCIAL, LLC, a California
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 30-2023-01360010-CU-OE-CXC
*[Assigned to Hon. Melissa McCormick, Dept
CX104, for all purposes]*

**CLASS ACTION AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action and PAGA Action Settlement Agreement and Release of Claims is entered into by and between Plaintiff Dee Dever, individually and on behalf of the proposed Class, and Defendant Rescue 1 Financial, LLC, and is approved as to form by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Dee Dever v. Rescue 1 Financial, LLC*, Orange County Superior Court, Case No. 30-2023-01360010-CU-OE-CXC, which was commenced on November 8, 2023.

2. "Administrator" means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

3. "Administration Costs" means the costs payable from the Settlement Amount to the Administrator for administering this Settlement, including, but not limited to, printing and mailing the Notice Packet, calculating Settlement payments, tracking documents for this Settlement, tax reporting, and calculation and payment to the applicable tax authorities of the employee and employer share of payroll taxes, unclaimed property due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Administration Costs shall be paid from the Settlement Amount, including, if necessary, any costs approved by the Court in excess of the amount represented by the Administrator as being the maximum costs necessary to administer the Settlement.

4. "Aggrieved Employee(s)" is defined as all current and former sales employees of Defendant in California who were eligible to receive commission pay as an "Inside Sales" exempt employee at any time during the PAGA Period, including employees with the job title of Financial Consultant and/or a sales individual entitled to earn commission from enrollment of debt resolution clients.

5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class

1 Action and PAGA Representative Action Settlement Agreement and Release of Claims.

2 6. “Class” is defined as all current and former sales employees of Defendant in
3 California who were eligible to receive commission pay as an “Inside Sales” exempt employee at
4 any time during the PAGA Period, including employees with the job title of Financial Consultant
5 and/or a sales individual entitled to earn commission from enrollment of debt resolution clients.

6 7. “Class Member(s)” refers to individual members of the Class.

7 8. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
8 Lauby LLP.

9 9. “Class Data” means a complete list that Defendant will diligently and in good
10 faith compile from its records and provide to the Administrator on one spreadsheet which shall
11 include, to the extent available from Defendant’s records, for each Class Member, the
12 individual’s full name; last known mailing address; Social Security Number; total Workweeks
13 worked during the PAGA Period; total Workweeks worked during the Class Period; and total
14 number of Workweeks in which the Class Member received commission pay and overtime pay
15 in the same Workweek.

16 10. “Class Period” is deemed to be any time during the period of November 8, 2019,
17 through October 1, 2024.

18 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Dee Dever.

19 12. “Complaint” refers to the operative First Amended Complaint, alleging class and
20 PAGA representative action claims, which was filed in the Orange County Superior Court on
21 January 12, 2024.

22 13. “Court” means the California Superior Court, County of Orange.

23 14. “Defendant” means and refers to Defendant Rescue 1 Financial, LLC.

24 15. “Defendant’s Counsel” or “Defense Counsel” means and refers to Devon Lyon of
25 Lyon Legal, P.C.

26 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
27 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
28 Procedure section 663, then the date the Court enters an order granting Final Approval of the

Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval of the Settlement, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure section 663 or initiates another collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or other collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

17. “Escalator Clause:” Defendant represents that there are approximately 500 Class Members who collectively worked approximately 35,000 Workweeks in California during the Class Period. As such, the Parties agree that, should the total number of workweeks exceed 38,500 (which is 10% more than Defendant’s representation), then the Settlement Amount shall increase by \$14.00 (\$490,000 divided by 35,000) for each additional workweek above 38,500.

18. “Final Approval” refers to the order of the Court granting Final Approval of this Settlement and entering a judgment approving this Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties.

19. “Individual Class Payment” refers to each Participating Class Member’s share of the Net Settlement Amount, as further discussed in Paragraph 47(c) below.

20. “Individual PAGA Payment” refers to the pro rata share of an Aggrieved Employee’s payment from the 25% of PAGA Penalties allocated to Individual PAGA Payments to the Aggrieved Employees, as further discussed in Paragraph 47(h) below.

21. “Net Settlement Amount” is the Settlement Amount less the Attorneys’ Fees and Costs Award, Service Payment to the Class Representative as awarded by the Court, Administration Costs, and PAGA Penalties, as further explained in Paragraph 47(b) below.

22. “Notice Packet” means the Class Notice (which is a notice of proposed class and representative action settlement that will be sent to the Class Members and which will advise each Class Member of the Settlement, including how their Individual Class Payment, and if applicable, their Individual PAGA Payment, will be calculated; Class Member rights and deadlines to be excluded from the Class; and the setting of a Final Approval Hearing), the

Request for Exclusion Form, and Objection Form.

23. “PAGA Penalties” means the amount that the Parties have agreed to pay allocated to PAGA civil penalties, 75% of which will be paid to the Labor and Workforce Development Agency (“LWDA”), and 25% of which will be allocated for Individual PAGA Payments, as required by the PAGA.

24. “PAGA Period” is deemed to be any time during the period of November 8, 2022, through September 11, 2024.

25. “Participating Class Member(s)” means any and all Class Members who do not opt-out by submitting a valid Request for Exclusion. Only Participating Class Members will receive an Individual Class Payment.

26. “Parties” mean Plaintiff and Defendant, collectively.

27. “Preliminary Approval Date” means the date the Court approves the Settlement and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be jointly prepared by the Parties and entered by the Court, upon the motion of Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not object to Plaintiff’s motion for preliminary approval. Defense Counsel will be provided with no less than five (5) court days to review and comment upon the draft motion before it is filed, and Class Counsel agrees to reasonably consider the comments from Defense Counsel.

29. “QSF” means the Qualified Settlement Fund set up by the Administrator which the Parties agree will at all times be treated as a “qualified settlement fund” within the meaning of Treasury Regulations section 1.468B-1, *et seq.* The Parties agree the Administrator shall, in establishing the account, make any such elections as necessary or advisable to carry out the “relation back election” (as defined in Treasury Regulations section 1.468B-1(j)(2)(i)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and

requirements contained in such regulations. The Parties further agree and acknowledge that, for purposes of Section 468B of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder, only the Defendant shall be treated as a “transferor” (within the meaning of such term under Treasury Regulations section 1.468B-1(d)(1)) with respect to the QSF.

30. “Released Class Claims” means all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition. The time period governing the Released Class Claims shall be the Class Period.

31. “Released PAGA Claims” means the PAGA claims alleged in the Complaint, or that reasonably could have been based on the facts stated in the Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages each period, (8) failure to timely pay wages upon separation of employment, (9) failure to provide accurate itemized wage statements, and (10) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the Released PAGA Claims shall be the PAGA Period.

32. “Released Parties” means Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, insurers, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing.

33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a) below.

34. “Response Deadline” is 45 calendar days from the date the Notice Packet is

mailed to the Class Members.

35. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to Class Representative Dee Dever in addition to his Individual Class Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

36. “Settlement Amount” means the total maximum amount that Defendant will be required to pay under this Agreement, which is \$490,000.00, unless increased pursuant to the Escalator Clause, except for Defendant’s obligation to fund its share of payroll taxes on the portion of Individual Class Payments that are allocated to wages, as further discussed in Paragraph 47I below.

37. “Share Points” will be used to calculate a Class Member’s Individual Class Payment, and each Class Member’s Share Points shall be calculated as follows: (1) each Week Worked by a Class Member during the Class Period shall be credited with 1 Share Point, and (2) each Week Worked in which the Class Member received commission pay and overtime pay in the same Workweek shall be credited with 4 Share Points. The total combined share points credited will be referred to as a Class Member’s Share Points.

38. “Share Point Rate” shall mean the value of each individual Share Point, as calculated by dividing the Net Settlement Amount by the total of all Share Points credited to all Class Members.

39. “Workweeks” or “Weeks Worked” means any and all workweeks during the Class Period, or if applicable, the PAGA period, during which the Class Member and/or Aggrieved Employee worked at least one day for Rescue 1 Financial, LLC, in California. The Parties have for simplicity agreed to use workweeks for the purpose of calculating both Individual Class Payments and Individual PAGA Payments.

B. General Terms

40. On November 7, 2023, Plaintiff sent a letter to the LWDA notifying it and Defendant that Plaintiff intended to pursue claims against Defendant under the PAGA for violation of California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802

(“LWDA Notice Letter”). The following day, Plaintiff filed a putative class action in the Orange County Superior Court.¹ Ultimately, the LWDA declined to assert jurisdiction over the PAGA Claims, so on January 12, 2024, Plaintiff filed the operative first amended complaint (the “Complaint”), adding PAGA Claims. The Complaint alleges Class Claims and PAGA Claims for: (1) failure to pay minimum wages (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to pay vested vacation; (7) failure to timely pay wages upon separation of employment; (8) failure to provide accurate itemized wage statements; (9) unfair and unlawful competition; and (10) claims for PAGA penalties.

41. Defendant denies any and all liability or wrongdoing of any kind associated with the claims asserted in the Action, dispute the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative treatment.

42. Plaintiff believes that he can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

43. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting informal discovery by exchanging sampling of payroll and timekeeping records for Class Members, relevant policy documents, class size and workweek information, and information regarding average hourly rates. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation of the Class Members’ claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and

¹ Plaintiff submitted the LWDA Notice Letter and filed the initial complaint using a pseudonym (“John Doe”) to protect his privacy and to protect the interests of the putative class members. However, after a series of meet and confers, the Parties stipulated that Plaintiff would disclose his identity in exchange for certain agreements including that Defendant is prohibited from contacting Plaintiff and his family members (other than through Plaintiff’s counsel) during the pendency of this litigation.

circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues.

44. On September 11, 2024, Plaintiff and Defendant participated in a full-day mediation with Hon. Dalila Lyons (Ret.), who has a long history of handling Mandatory Settlement Conferences for the LA Superior Court system, including for class actions and PAGA cases, and who now serves as a private mediator. At the conclusion of mediation, the Parties agreed to settle for the Settlement Amount and entered into a memorandum of understanding.

45. This Settlement is a compromise of disputed claims. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the Settlement Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute, law, or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendant will stipulate that the Class Members described herein may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether class certification would be appropriate in a non-settlement context. Defendant expressly reserve its rights and declare that it would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Settlement Amount: The Parties agree to settle this Action for the Settlement Amount, unless increased pursuant to the Escalator Clause and Defendant's

obligation to separately pay its share of payroll taxes on the wage portion of the Individual Class Payments, which is the maximum amount that will be paid by Defendant and includes Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, Administration Costs, and PAGA Penalties.

(b) Net Settlement Amount: The entire Net Settlement Amount will be paid to Participating Class Members. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to Participating Class Members.

(c) Calculation of Individual Class Payments: The Individual Class Payment for each Participating Class Member will be calculated by the Administrator using the Class Data provided by Defendant, and by determining each Class Member's Share Points, and then multiplying the Class Member's Share Points by the Share Point Rate. If there are any timely submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual Class Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: 20% will be allocated as wages subject to withholding of all applicable local, state, and federal taxes; and 80% will be allocated for interest and statutory penalties pursuant to applicable California Labor Code sections from which no taxes will be withheld. If required based on the settlement amounts, the Administrator will issue to each Participating Class Member and/or Aggrieved Employee an Internal Revenue Service ("IRS") Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$5,000.00, in recognition of the service that Plaintiff performed on behalf of the Class. Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of

the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in connection with this Service Payment. Plaintiff shall be solely and legally responsible to pay all applicable taxes on this Service Payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Settlement Amount, plus reasonable litigation costs not to exceed \$25,000.00 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fees and Cost Award shall be paid from the Settlement Amount, and, except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the Court.

(g) Administration Costs: The fees and other charges of the Administrator will be paid from the Settlement Amount, not to exceed \$8,000.00, unless an increase is justified by the Administrator and is agreed to by the Parties and approved by the Court.

(h) PAGA Penalties: The Parties agree that \$20,000.00 is allocated to PAGA Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this amount, \$15,000.00 (75%) shall be paid to the LWDA as its share of civil penalties under the PAGA, and \$5,000.00 (25%) will be the total amount allocated to Individual PAGA Payments to the Aggrieved Employees, which for simplicity shall be calculated and allocated pro-rata on a

Weeks Worked basis during the PAGA Period. The Individual PAGA Payments will be treated entirely as civil penalties and shall be reported to the extent required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement by submitting a copy of this Settlement Agreement to the LWDA at the same time as they submit this Settlement Agreement to the Court for Preliminary Approval, as required by California Labor Code section 2699(1)(2). Within ten (10) days following the Final Approval Order, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code section 2699(1)(3).

(i) Tax Liability: Class Counsel, Defendant, and Defense Counsel make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by Class Counsel, Defendant, or counsel for Defendant in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA Payments, described herein. The portion of Individual Class Payments deemed payment for settlement of claims for wages and expenses shall be reported on IRS Form W-2 with respect to the year of payment as wage income to the Class Member by the Administrator on behalf of the QSF. The Administrator shall issue IRS Form 1099 if required for the remaining portion of the Individual Class Payment and for any Individual PAGA Payment. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein.

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING

PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

(k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Participating Class Members and Aggrieved Employees will not have to make a claim in order to receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of Individual Class Payments or Individual PAGA Payments, will be made directly to each Participating Class Member and Aggrieved Employee. The Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as

a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

(l) Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and will so represent same to the Court.

D. Release by the Participating Class Members

48. Upon the Effective Date occurring and Defendant fully funding the Settlement Amount, Plaintiff and the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period.

49. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

E. Release of PAGA Claims

50. Upon the Effective Date occurring, and after the Court's Judgment is final and Defendant has fully funded the Settlement Amount, Plaintiff – in his individual capacity and on behalf of the State of California, the LWDA and Aggrieved Employees – will be deemed to have released and discharged the Released Parties from the Released PAGA Claims for the PAGA Period.

51. Regardless of whether a Class Member and/or Aggrieved Employee submits a valid Request for Exclusion, neither Plaintiff nor any Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from the Released PAGA Claims.

52. It is the intent of the Parties that the Final Approval judgment shall have full equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

F. Release by Plaintiff and Class Representative

53. Class Representative does hereby, for himself and his spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, lawsuits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated

damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Agreement, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Rescue 1 Financial, LLC, or the termination of such employment (the "Class Representative's Released Claims").

54. Without limiting the generality of the foregoing, this general release by Plaintiff includes all federal, state, and local statutory claims, federal, and state common law claims (including but not limited to those for contract, tort, and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code.

55. Plaintiff agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown as of the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and discharge the Released Parties, and understands that, by the execution of this Settlement Agreement, no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

56. In addition, Plaintiff has entered into a separate individual Settlement Agreement for unrelated claims for discrimination and wrongful termination.

57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code

of the State of California states:

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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all Parties, Plaintiff expressly acknowledges that this Settlement Agreement is intended to include in its effect, without limitation, all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Rescue 1 Financial, LLC. The only claims not covered by this release are claims that cannot be released by private or court approved agreement under applicable law.

G. Interim Stay of Proceedings

58. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as is necessary to effectuate the Settlement.

H. Notice Process

59. Appointment of Administrator. The Parties have agreed to the appointment of the Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, exercising its judgment to determine the current mailing address for each Class Member, including performing a skip-trace to identify any updated addresses, independently reviewing and verifying documentation associated with any opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Class Payments and Individual PAGA Payments, issuing and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

60. Additional Duties of the Administrator. The Administrator shall upload and maintain on its website the following non-inclusive list of documents: the Settlement Agreement, the Notice Packet, the Motion for Preliminary Approval, the Order granting Preliminary Approval, the Motion for Final Approval, and the Order granting Final Approval. These documents shall be accessible by the Class via URL link that will be provided in the Class Notice.

61. Disputes Regarding Administration. Any disputes not resolved by the Parties and the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will meet and confer in good faith to attempt to resolve the dispute without involving the Court.

62. Class Data. Within twenty (20) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Administrator. The Administrator will inform the Parties within five (5) days of receipt of the Class Data if the Escalator Clause has been triggered and, if so, if the Administrator will seek an adjustment of the Administration Costs. The Administrator also will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Administrator will remain confidential, will be used solely for purposes of administration of the Settlement, and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court. Although Class Counsel will not be provided with the Class Data, nothing herein shall prevent Class Counsel from responding to inquiries or requests from Class Members regarding the Action and Settlement.

63. Total Workweeks. At least five (5) court days prior to mailing the Notice, the Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary calculation of all payments to be paid from the Settlement Amount, including the estimated Individual Class Payments to each Class Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and a control number used in place

of the name). In the event that the total Workweeks worked by all Class Members through September 11, 2024 triggers the Escalator Clause, the Administrator shall notify the Parties.

64. Class Notice. The Class Notice, as approved by the Court, shall be sent by the Administrator to the Class Members, by first class mail, in English only, within ten (10) calendar days following the Administrator's receipt of the Class Data. The Administrator shall use reasonable skip trace methods to obtain forwarding addresses of Class Members if any envelopes are returned.

65. Returned Class Notices. The Administrator will take steps to ensure that the Class Notice is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update, a mailing address. Class Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Administrator learning of the failed mailing and its receipt of the updated address. The re-mailed Class Notice shall be identical to the original Class Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by no later than 15 (fifteen) days from the original Response Deadline.

66. Presumption Regarding Receipt of Notice Packet. It will be conclusively presumed that if an envelope has not been returned undeliverable to Administrator by the Response Deadline that the Class Member received the Notice Packet.

67. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt-out. Regardless of whether any Class Members opt out of the Settlement, they will still be bound by the PAGA Release if they are an Aggrieved Employee. The Class Notice will inform Class Members of his/her estimated Individual Class Payment and Individual PAGA Payment, as well as the number of Share Points credited and the weeks he/she worked during the Class Period and the PAGA Period. Class Members may dispute their Share Points or Weeks Worked by timely submitting evidence to the Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Administrator will evaluate the evidence submitted by the Class Member and provide the

evidence submitted to Class Counsel and Defense Counsel, who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Workweeks and estimated Individual Class Payment and Individual PAGA Payment. The Administrator shall attach all disputes to its Declaration of Due Diligence, along with any evidence submitted, and include an initial recommendation in its declaration as to the number of Workweeks and Share Points to be credited for any disputing Class Members. However, the Court shall have the right to review any decision and make a final decision, which will be binding upon the Class Members and the Parties. Class Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks Worked and Share Points, and to object or opt out, unless extended by the Court.

68. Declaration of Due Diligence. The Administrator shall provide counsel for the Parties a declaration of due diligence and proof of mailing with regard to the mailing of the Notice seven (7) days after the initial Response Deadline.

69. Class Members' Rights. Each Class Member will be advised of the Settlement, the ability to object to the Settlement, and the ability to request exclusion from the Class Claims. The Class Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Class. Any Class Member, other than Plaintiff, may request to be excluded from the Class by submitting a Request for Exclusion Form, using the form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the Administrator and postmarked on or before the Response Deadline in order to be timely, unless the Parties otherwise agree in writing. Any such request must be made in accordance with the terms set forth in the Notice Packet. The Administrator shall attach each Request for Exclusion Form to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement as to the Class Action Settlement, including the right to object to or otherwise challenge the Settlement; (ii) will not be

entitled to receive any Individual Class Payment under this Agreement; and (iii) will not be bound by the Class Action Settlement including the Released Class Claims. Any Class Member who is an Aggrieved Employee who requests timely exclusion will still be bound by the PAGA Settlement in regard to the Released PAGA Claims to the fullest extent permitted by law and will receive an Individual PAGA Payment. The Parties and their counsel shall not encourage or solicit Class members to submit requests for exclusion or objections, directly or indirectly, through any means.

(b) Binding Effect on Participating Class Members. All Participating Class Members will: (i) be bound by the terms and conditions of this Agreement, the Final Approval judgment, and the releases set forth herein; and (ii) unless they object as set forth herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement. Any Class Member, other than Plaintiff, who does not submit a valid and timely Request for Exclusion Form may object to the terms of this Agreement by completing an Objection Form provided within the Notice Packet. To object, the Class Member must mail the Objection Form to the Administrator, postmarked by the Response Deadline in order to be timely, unless the Parties otherwise agree in writing. Alternatively, the Class Member may elect to make an oral objection at the Final Approval hearing; objecting Class Members are not required to file a notice of intent to appear in advance. The Court will consider all oral objections made in person or through counsel at the Final Approval Hearing regardless of whether a written objection has been submitted. Additionally, any objection must be made in accordance with the terms set forth in the Notice Packet. The Administrator shall provide any written objections to Class Counsel and Defense Counsel within three (3) days of receipt, and the Administrator shall attach the same to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an Objection Form remains eligible to receive an Individual Class Payment. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or their counsel related to any objections to the Settlement. Submitting an

objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure section 663.

(d) Failure to Object. Any Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, motion under California Code of Civil Procedure section 473, and extraordinary writs.

(e) Responses to Objections. Counsel for the Parties may jointly or separately file a response to any objections submitted by any Class Members at least five (5) court days before the date of the Final Approval Hearing.

(f) Class Members will have until the Response Deadline to submit a Request for Exclusion Form or Objection Form to the Administrator by U.S. Mail. The Administrator shall disclose jointly to Class Counsel and Defense Counsel on a weekly basis all objections or Requests for Exclusion Forms that were submitted.

70. Funding of the Settlement Amount. Defendant shall fund the Settlement Amount, plus Defendant's share of payroll taxes, within twenty-one (21) days of the Effective Date into an account established by the Administrator.

71. Distribution of Funds. No later than ten (10) calendar days after the receipt of the Settlement Amount and Defendant's share of payroll taxes, the Administrator shall mail the Individual Class Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, and the payment to the LWDA for PAGA Penalties in accordance with the percentages set forth herein, and will pay itself the Administration Costs.

(a) Deadline for Cashing/Depositing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash their settlement checks. The release will be binding upon all Participating

Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Administrator within 180 days of mailing, the Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event that a Participating Class Member and/or Aggrieved Employee notifies the Administrator that they believe that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check. For any check is not cashed within 180 days of mailing, the check will be voided and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Participating Class Member and/or Aggrieved Employee.

I. Duties of the Parties Prior to the Court's Approval

72. Promptly after execution of this Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order jointly prepared by the Parties, accomplishing the following:

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement only;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable, and adequate.

J. Duties of the Parties Following Court's Final Approval

73. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order jointly prepared by the Parties:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Administrator for costs of administering the settlement; and

(c) Entering judgment pursuant to the Settlement.

K. Voiding the Agreement

74. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and the Parties will be restored to their respective positions as if they had not entered into the Agreement.

75. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or not decertified, or that this matter may proceed as a representative action; or (ii) Defendant is liable to Plaintiff or any Class Member other than according to the Settlement's terms. In the event that the Settlement is not approved or otherwise voided, the Parties expressly reserve all rights.

76. If the Settlement is voided or fails for any reason, any costs incurred by the Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

77. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

78. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement and final entry of judgment.

80. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Agreement.

81. No Admission. Defendant denies any and all liability to Plaintiff, Class Members, and Aggrieved Employees in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken into account the uncertainty and risks inherent in litigation, and without conceding the validity of any claims or any infirmity in the defenses that it has asserted or could assert in the Action, has determined that it is desirable and beneficial that the Complaint's claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

82. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into

this Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except that the Settlement may be filed and used in this litigation or any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any subsequent action against or by Defendant to support a stay of such subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The stipulation for class certification as part of this Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

83. No Publicity. The Parties will not publicize the Settlement or disclose it to third parties prior to the Court granting Preliminary Approval, except as required or necessary to effectuate its terms and comply with law. After Preliminary Approval and the Final Approval Date, Class Counsel and Class Representative agree that they will not discuss the Settlement with the media, any settlement and verdict reporting service, any social media postings, or other Internet postings. Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or other case materials in the Action related to seeking and obtaining Court approval of this Settlement and the related awards of attorneys' fees and costs, or to communications with Class Members or their representatives about this Settlement, including through the posting of Court-filed documents on Class Counsel's websites for access solely by the Class Members, or to prevent the Parties or their representatives from communicating with financial or legal advisors regarding the Settlement. In response to any media inquiry, Class Counsel may state only that the Action has been settled on terms mutually agreeable to the Parties.

84. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and

that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waives the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

85. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

86. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto or their counsel, and if necessary, approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

87. Jurisdiction of the Court. Consistent with California Code of Civil Procedure section 664.6 and California Rules of Court, Rule 3.769(h), the Court shall retain jurisdiction over the Parties with respect to the interpretation, implementation, and enforcement of the Agreement.

88. Choice of Law. This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

89. Integration Clause. This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

90. Binding On Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

91. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Class Notice will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

92. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

-- Signatures on Next Page --

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Dated: Feb 10, 2025

PLAINTIFF AND CLASS REPRESENTATIVE


Dee Dever (Feb 10, 2025 10:30 PST)

Dee Dever

Dated: 1/29/2025

DEFENDANT RESCUE 1 FINANCIAL, LLC

DocuSigned by:

B3E2E9D62ECE440...

By: Brad Smith (name)

Co-CEO & Founder (title)

APPROVED AS TO FORM:

Dated: 2/10/2025

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiff

Dated: _____

DEFENSE COUNSEL
LYON LEGAL, P.C.

Devon M. Lyon, Esq.
Attorneys for Defendant

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Dever v. Rescue 1 Financial, LLC

(Orange County Superior Court, Case No. 30-2023-01360010-CU-OE-CXC)

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

A class and representative action settlement has been reached by the parties to a lawsuit involving wage and hour claims. The settlement covers all current and former sales employees of Defendant Rescue 1 Financial, LLC (“Defendant or Rescue 1 Financial”) in California who were eligible to receive commission pay as an “Inside Sales” exempt employee at any time from November 8, 2019 through October 1, 2024 (the “Class Period”), including employees with the job title of Financial Consultant and/or a sales individual entitled to earn commission from enrollment of debt resolution clients (the “Class Members”).

The settlement resolves a class and representative action lawsuit filed in Orange County Superior Court, entitled *Dee Dever v. Rescue 1 Financial, LLC, et al.* (the “Action”). Plaintiff and Class Representative Dee Dever (“Plaintiff”) alleges that Rescue 1 Financial failed to: pay all wages due during employment, including minimum wages, overtime wages, and vested vacation; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse business expenses; timely and properly pay final wages upon separation of employment; and issue accurate and complete wage statements. Plaintiff also brings a claim for civil penalties under the California Private Attorneys’ General Act of 2004 (“PAGA”) on behalf of all current and former sales employees of Defendant in California who were eligible to receive commission pay as an “Inside Sales” exempt employee at any time from November 8, 2022, through September 11, 2024 (the “PAGA Period”), including employees with the job title of Financial Consultant and/or a sales individual entitled to earn commission from enrollment of debt resolution clients (the “Aggrieved Employees”).

Rescue 1 Financial denies liability for all claims and contends that its policies and practices comply with the law. The Settlement avoids the costs and risks of continuing the Action; pays money to employees; and releases Defendant from liability from the claims that were or could reasonably have been asserted based on the facts alleged in the Action.

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to the Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records and the Parties’ current assumptions, the number of Workweeks you are credited with working during the Class Period and/or PAGA Period according to Defendant’s records are shown in the chart below. The settlement amount you may receive will depend on several factors and will ultimately depend on the total “Share Points” you are credited with (Class Members are credited with 1 Share Point for each week worked during the Class Period and an additional 4 Share Points for each week worked during the Class Period where a Class Member received commission and overtime pay in the same workweek. (If no weeks worked are stated for the PAGA Period then, according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you did not work during the PAGA Period.)

Calculations and Data Points for Estimated Individual Class Payment

Weeks Worked in Class Period <i>1 Share Point per Week</i>	Weeks Worked in Class Period with Commission and Overtime Pay <i>4 Share Points Per Week</i>	Total Share Points	<i>Estimated Individual Class Payment</i>
INSERT	INSERT	INSERT	INSERT

Calculations and Data Points for Estimated Individual PAGA Payment

Weeks Worked during PAGA Period	<i>Estimated Individual PAGA Payment</i>
INSERT	INSERT

If you believe that you worked a different number of weeks under any categories above, you can submit a dispute by [REDACTED], 2025 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood this Notice. 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 as a Service Payment and to Plaintiff’s attorneys (“Class Counsel”) for their requested attorneys’ fees and costs. If the Settlement is approved, the Court will enter an order and judgment that requires Defendant to make payments under the Settlement and bars Class Members and Aggrieved Employees from asserting certain claims against Defendant as described in Question 3 below.

Based on Defendant’s records showing that you worked for Defendant during the Class Period and/or PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT IF THE SETTLEMENT IS APPROVED	To receive a cash payment from the Settlement, no further action is required on your part. If you do nothing and the Court approves the Settlement, you will be mailed a settlement payment and you will release certain claims. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do <u>not</u> wish to participate in the Settlement of Class Claims, you may “opt-out” of the settlement of the Class Claims. You may not opt-out of the settlement of the PAGA claims. If you choose to opt-out of the Settlement of Class Claims, you must submit a Request for Exclusion Form by [REDACTED], 2025 (see Section 6 for more details on how to opt-out). If you opt-out, you cannot object to the Class Settlement, and you will receive no money from the Class Settlement, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations. If you are an Aggrieved Employee, you will be paid a share of the PAGA Payment and will be bound by the PAGA Release, as detailed below.
OBJECT TO THE SETTLEMENT	If you object to the Settlement of Class Claims, you may submit an Objection Form stating why you object to the Settlement by [REDACTED], 2025. You may also orally object at the Final Approval Hearing (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of Workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed to be correct, but you may provide evidence to the Administrator showing how many Workweeks you believe that you should be credited, and the Court will render a final decision.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT IS NOT EXPECTED OR REQUIRED	
DATE: [REDACTED], 2025 TIME: [REDACTED]	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You do not 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. Class Members can object to the Settlement prior to or at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Rescue 1 Financial. On November 8, 2023, Plaintiff filed the class and representative Action against Defendant, which alleges the following violations of the California Labor Code: (1) failure to pay minimum wages, (2) failure to pay overtime wages; (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition. Based on the same claims, Plaintiff also asserted a claim for civil penalties under the California Private Attorneys' General Act of 2004 (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

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

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

In preliminarily approving the Settlement, the Court did not make any determination in favor of Plaintiff or Defendant. There has been no decision on the merits or a trial. Instead, both sides conducted investigations and analysis of the facts and applicable law, and hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end 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 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 and strongly disputes Plaintiff's 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?

1. Defendant Will Pay \$490,000.00 as the Settlement Amount. Defendant has agreed upon final approval of the Settlement to deposit the Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's Costs, and PAGA Penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Settlement Amount within twenty-one days after the Judgment becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if any Participating Class Member objects to the proposed Settlement or the Judgment is appealed.

2. Court Approved Payments from the Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following payments from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees (\$163,333.33) and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$5,000.00 to the Class Representative as a Service Payment for filing the Action, working with Class Counsel, and representing the Class Members and Aggrieved Employees. The Class Representative will also receive an Individual Class Payment and Individual PAGA Payment.
- C. Up to \$8,000.00 to the Administrator for services administering the Settlement.

- D. Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. Net Settlement Distributed to Class Members. After subtracting the above payments in amounts approved by the Court, the Administrator will distribute the remaining funds (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on the number of Share Points credited to each Class Member during the Class Period, and then multiplying the Class Member’s Share Points by the Share Point Rate. “Share Points” will be credited as follows: (1) each Week Worked by a Class Member during the Class Period shall be credited with 1 Share Point, and (2) each Week Worked in which the Class Member received commission pay and overtime pay in the same Workweek shall be credited with 4 Share Points. The total combined share points credited to each Class Member will be multiplied by the Share Point Rate, which is the value of each Share Point, and is calculated by dividing the Net Settlement Amount by the total of all Share Points credited to all Class Members.

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

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

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

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, no later than the Response Deadline. See Section 6 of this Notice for details on how to opt-out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible that the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible that the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Request for Exclusion Forms and Objection Forms (if any). The Administrator will also decide any disputes over Weeks Worked, 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.

9. Participating Class Members’ Release. After the Judgment is final and Defendant has paid the Settlement Amount, Participating Class Members will release the Released Parties of the Released Class Claims, which means all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay final wages, (8) failure to provide accurate itemized wage statements, and (9) unfair and unlawful competition (“Released Class Claims”). The time period governing the Released Class Claims shall be the Class Period.

As used herein, “Released Parties” means Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, insurers, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing.

10. Release of Released PAGA Claims. After the Judgment is final and Defendant has paid the Settlement Amount, Plaintiff - in his individual capacity and on behalf of the State of California, the LWDA and Aggrieved Employees - shall release the Released Parties of the Released PAGA Claims, which means the PAGA claims alleged in the Complaint, or that reasonably could have been based on the facts stated in the Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages each period, (8) failure to timely pay wages upon separation of employment, (9) failure to provide accurate itemized wage statements, and (10) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period. The PAGA Released Claims do not release any Aggrieved Employees’ claims for wages or statutory penalties.

4. HOW IS MY SETTLEMENT PAYMENT CALCULATED?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments based on each person’s total Share Points. Each Class Member’s Share Points shall be calculated as follows: (1) each Week Worked by a Class Member during the Class Period shall be credited with 1 Share Point, and (2) each Week Worked by a Class Member during the Class Period in which the Class Member received commission pay and overtime pay in the same Workweek shall be credited with 4 Share Points. The total combined share points in both classes will be referred to as a Class Member’s Share Points. The Settlement Administrator will calculate Class Members’ Individual Class Payments by multiplying the Class Members’ Share Points by the “Share Point Rate” which is the value of each individual Share Point, as calculating by dividing the Net Settlement Amount by the total of all Share Points credited to all Class Members.

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

3. Disputing Weeks Worked and/or Share Points. The number of weeks you worked during the Class Period and PAGA Period (and the corresponding Share Points), as recorded in Defendant’s records, are stated in the tables on page 1 of this Notice . You have until [REDACTED], 2025 (“Response Deadline”) to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant’s calculation of Weeks Worked 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 attempt to resolve Workweek disputes based on your submission and on input from Class Counsel and Defendant’s Counsel, but the Court will have the right to review any initial decision made by the Administrator along with the evidence submitted. You cannot appeal or otherwise challenge the Court’s final decision.

5. HOW AND WHEN WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. Defendant has agreed to fund the Settlement Amount approximately thirty (30) days after the judgment is final. Upon receipt of the funds, the Administrator will send, by U.S. mail, a check to every Participating Class Member and Aggrieved Employee approximately ten (10) days after receipt of payment.

2. Aggrieved Employees Only. If you opted out of the Class Settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, one check containing your Individual PAGA Payment.

3. Individual payments will be mailed to Participating Class Members and Aggrieved Employees only if the Court grants Final Approval of the Settlement and Defendant timely funds the Settlement Amount. The dates above are estimates; the dates after the Final Approval Hearing on which the above actions will take place will depend on several factors, including whether any Class Member objects to the Settlement or appeals the Court's Final Approval.

Your check(s) 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?

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself from the Class Settlement by completing and mailing to the Administrator the enclosed Request for Exclusion Form, postmarked no later than [REDACTED], 2025.

Any Class Member who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under the Class Settlement, including the right to object to, appeal, or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims; and (4) will not be bound by this Settlement, or the Judgment, except as to the release of PAGA claims in which case you remain eligible to receive a PAGA payment even if you opt-out.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments even if they opt-out of the Class Settlement.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2025 (the "Response Deadline").**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection on the enclosed Objection Form, and should include the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection should include the name and address of your attorney. The objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2025.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the Settlement become final even if you object to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

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 prepared to inform the Court to what you object, why you object, and any facts that support your objection(s). See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2025, at [REDACTED] a.m./p.m., the Court will hold a public hearing in Department CX104 of the Civil Complex Center for the Superior Court for the State of California, County of Orange, 751 W. Santa Ana Blvd., Santa Ana, CA 92701 for the purposes of determining whether the proposed Settlement is fair, adequate, and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether

to approve the payment to the LWDA, and whether to approve Plaintiff's request for the Service Payment. This hearing may be continued or rescheduled by the Court without further notice to you other than by you checking the Court's docket. If you do not object to the proposed Settlement, you can, but do not need to, appear at the hearing and do not need to take any other action. Class Counsel will answer any questions the Judge may have.

9. HOW CAN I GET MORE INFORMATION?

For your convenience, the Administrator has uploaded key case documents (including the Settlement Agreement, the Class Notice Packet, Motion for Preliminary Approval, and Orders granting Preliminary Approval, Final Approval, and the Judgment) for this case to the following website: **INSERT URL HERE**. The website will be active for at least 180 days.

If you have questions about this Notice, the process to opt-out or object, or the Settlement, or if you did not receive this Notice in the mail but obtained it through other means and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail. Additionally, should you desire any additional information, or if you wish to communicate directly with Class Counsel or Defendant's Counsel, you may contact them at the contact information noted here:

Settlement Administrator	Class Counsel	Defendant's Counsel
Name Mailing Address Telephone Number Case Website	Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Devon Lyon, Esq. <i>d.lyon@lyon-legal.com</i> Anand Mathew, Esq. <i>a.mathew@lyon-legal.com</i> LYON LEGAL, P.C. 1154 E. Wardlow Road Long Beach, CA 90807 Tel: (562) 216-7382

You may also seek advice from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is posted on the Administrator's website (above), as well as on file with the Court and attached to the **Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement** filed on , 2025 and which is available to be inspected at any time during regular business hours at the Office of the Clerk, Orange County Superior Court, at 700 Civic Center Drive West, Santa Ana, CA 92701.

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

10. WHAT IF I DO NOT GET OR LOSE MY SETTLEMENT CHECK(S)?

The settlement check(s) will automatically expire 180 days after the check(s) is mailed. If you do not receive or do not cash any check, you may contact the Administrator to request that the check(s) be reissued so long as more than 180 days from the mailing of the third check has not passed. For any payments that are not cashed within 180 days of the third and final payment, the payment will be void and a stop-payment will be issued on any outstanding checks, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the recipient. Contact the California State Controller's Office for information on how to claim uncashed funds.

11. WHAT IF MY ADDRESS HAS CHANGED?

To ensure that you receive your check, you should immediately notify the Administrator if you have moved or otherwise changed your mailing address.

REQUEST FOR EXCLUSION FORM

Dever v. Rescue 1 Financial, LLC

Orange County Superior Court, Case No. 30-2023-01360010-CU-OE-CXC

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE, AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Dever v. Rescue 1 Financial, LLC* (Orange County Superior Court Case No. 30-2023-01360010-CU-OE-CXC). I understand that, by excluding myself from the settlement, I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2025

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

OBJECTION FORM

Dever v. Rescue 1 Financial, LLC

Orange County Superior Court, Case No. 30-2023-01360010-CU-OE-CXC

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE SECOND PAGE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Dever v. Rescue 1 Financial, LLC* (Orange County Superior Court, Case No. 30-2023-01360010-CU-OE-CXC) on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2025
[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “C”



LAUBY, MANKIN & LAUBY LLP

November 7, 2023

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Rescue 1 Financial, LLC
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Mr. Bradley Smith
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Re: PAGA Civil Penalty Claim
John Doe v. Rescue 1 Financial, LLC, et al.

To the Labor and Workforce Development Agency, Rescue 1 Financial, LLC, and Mr. Bradley Smith:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee John Doe¹ (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employers, Rescue 1 Financial, LLC, as well as its respective owners/officers, including Mr. Bradley Smith, among others (the “Owners”) (collectively, the “Company”) for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company and alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one specific example, Claimant and the Aggrieved Employees were frequently required to perform off-the-clock work at the beginning and end of shifts without compensation (*e.g.*, the Aggrieved

¹ Claimant sends this notice using the pseudonym “John Doe” to protect his privacy and to protect the interests of the other Aggrieved Employees by ensuring that the Company cannot attempt to settle directly with Claimant. *See Doe v. Lincoln Unified School Dist.* (2010) 187 Cal.App.4th 1286, 1291 (California law does not require that a party sue in his or her own name). However, after adequate protective orders are entered by the Court, Claimant agrees to disclose his identity.

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

Employees were required to perform off-the-clock work due to a computer-based timekeeping system that was not accessible until employees completed various boot-up tasks [at the beginning of shifts] and through which employees had to clock out and then perform various shut down tasks [at the end of shifts]). *Cadena v. Customer Connexx LLC* (9th Cir. 2022) 51 F.4th 831 (booting up and shutting down computers is compensable under the FLSA [and therefore the Labor Code]); *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

Additionally, Claimant and the Aggrieved Employees were paid on a commission basis that failed to properly compensate for all hours worked. Under this commission pay plan, the Company failed to pay the Aggrieved Employees at no less than the minimum wage for unpaid, on-duty time and tasks performed for the Company (*i.e.*, Aggrieved Employees did not receive proper compensation for non-commission-generating tasks or mandated *paid* rest breaks). And the Company did not pay any overtime compensation despite that the Aggrieved Employees frequently worked more than 8 hours per day and 40 hours per week.

Also, at all relevant times, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for the regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company, yet the Company did not pay all required wage premiums (including at the “regular rate” per § 226.7). As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant’s rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks. Furthermore, at all relevant times, Claimant and the Aggrieved Employees were denied paid rest breaks by virtue of the Company’s policy that only paid on a commission basis. As Claimant and the Aggrieved Employees could not generate commission compensation during a rest break, Claimant and the Aggrieved Employees were illegally denied paid rest breaks.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, cellular phone usage and internet plans to perform work for the Company. Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, “vacation hours”). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages and, further, failed to pay for vested and unused vacation at the “final rate” as required by Labor Code § 227.3.

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The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, vacation wages, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay” as required by Labor Code § 246.

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the Company and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the Company and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the Company and the Owners are an integrated enterprise and should be treated as a single employer because the Company and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the Company and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all material times herein mentioned were the owners/officers of the Company, and Claimant’s and the Aggrieved Employees’ actual employer or, in the alternative, were individuals employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein the Owners had the authority, in the interest of the Company to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant’s chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant’s complaint herein. Claimant also alleges that the Company and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the Company and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that the Company was merely the alter ego of the Owners in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and the Owners exercised undue dominance, control, influence, and management over the Company. Claimant further alleges that, at all relevant times, the Company has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to the Company should be imposed jointly and severally against the Owners. Adherence to the fiction of the separate existence of the corporate entity of the Company would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

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Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every 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.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

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FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all vested vacation upon separation of employment and, further, only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states "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." Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

PAGA ASSESSMENT FOR FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation. However, when Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay, not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR VIOLATION OF IWC WAGE ORDERS

(Labor Code § 1174; IWC Wage Order § 6(A); IWC Wage Order § 7(A))

Labor Code § 1174 and the relevant IWC Wage Order required the Company to accurately record and maintain "each employee's "[t]ime records showing when the employee begins and ends each work period," the time that each meal period began and ended, daily hours worked, and total hours worked in the payroll period. The Company failed to comply with these requirements, triggering civil penalties under §§ 1174.5 and/or 2699 each period.

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Under Labor Code § 204(a), wages are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to provide any information as to hours worked and, alternatively, failed to accurately reflect total compensable hours); failure to accurately state

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gross/net wages earned and all deductions (due to the failure to pay all required minimum/overtime and other wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start/end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment or other employees of the Company, he reserves the right to supplement this notice letter.

Respectfully,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

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LAUBY, MANKIN & LAUBY LLP

January 10, 2024

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Rescue 1 Financial, LLC
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Mr. Bradley Smith
16842 Von Karman Ave., Suite 300
Irvine, CA 92606

Re: PAGA Civil Penalty Claim
Dee Devers v. Rescue 1 Financial, LLC, et al.
LWDA Case No. LWDA-CM-992758-23

To the Labor and Workforce Development Agency, Rescue 1 Financial, LLC, and Mr. Bradley Smith:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as amended notification of the PAGA civil penalty claim of aggrieved employee Dee Devers¹ (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employers, Rescue 1 Financial, LLC, as well as its respective owners/officers, including Mr. Bradley Smith, among others (the “Owners”) (collectively, the “Company”) for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company and alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one specific example, Claimant and the Aggrieved Employees were frequently required to

¹ This amended notice is sent to disclose the name of Claimant Dee Devers. The initial notice was sent using the pseudonym “John Doe” to protect his privacy and the interests of other Aggrieved Employees by ensuring that the Company cannot attempt to settle directly with Claimant. However, the Company stipulated (in a signed pleading filed in Orange County Superior Court) that they would not contact Claimant other than through counsel, so Claimant now discloses his identity.

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perform off-the-clock work at the beginning and end of shifts without compensation (e.g., the Aggrieved Employees were required to perform off-the-clock work due to a computer-based timekeeping system that was not accessible until employees completed various boot-up tasks [at the beginning of shifts] and through which employees had to clock out and then perform various shut down tasks [at the end of shifts]). *Cadena v. Customer Connexx LLC* (9th Cir. 2022) 51 F.4th 831 (booting up and shutting down computers is compensable under the FLSA [and therefore the Labor Code]); *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

Additionally, Claimant and the Aggrieved Employees were paid on a commission basis that failed to properly compensate for all hours worked. Under this commission pay plan, the Company failed to pay the Aggrieved Employees at no less than the minimum wage for unpaid, on-duty time and tasks performed for the Company (i.e., Aggrieved Employees did not receive proper compensation for non-commission-generating tasks or mandated *paid* rest breaks). And the Company did not pay any overtime compensation despite that the Aggrieved Employees frequently worked more than 8 hours per day and 40 hours per week.

Also, at all relevant times, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for the regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company, yet the Company did not pay all required wage premiums (including at the “regular rate” per § 226.7). As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant’s rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks. Furthermore, at all relevant times, Claimant and the Aggrieved Employees were denied paid rest breaks by virtue of the Company’s policy that only paid on a commission basis. As Claimant and the Aggrieved Employees could not generate commission compensation during a rest break, Claimant and the Aggrieved Employees were illegally denied paid rest breaks.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, cellular phone usage and internet plans to perform work for the Company. Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, “vacation hours”). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay

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for these earned wages and, further, failed to pay for vested and unused vacation at the “final rate” as required by Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, vacation wages, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay” as required by Labor Code § 246.

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the Company and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the Company and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the Company and the Owners are an integrated enterprise and should be treated as a single employer because the Company and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the Company and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all material times herein mentioned were the owners/officers of the Company, and Claimant’s and the Aggrieved Employees’ actual employer or, in the alternative, were individuals employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein the Owners had the authority, in the interest of the Company to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant’s chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant’s complaint herein. Claimant also alleges that the Company and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the Company and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that the Company was merely the alter ego of the Owners in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and the Owners exercised undue dominance, control, influence, and management over the Company. Claimant further alleges that, at all relevant times, the Company has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to the Company should be imposed jointly and severally against the Owners. Adherence to

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the fiction of the separate existence of the corporate entity of the Company would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every 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.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558

imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all vested vacation upon separation of employment and, further, only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states "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." Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

PAGA ASSESSMENT FOR FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation. However, when Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay, not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR VIOLATION OF IWC WAGE ORDERS

(Labor Code § 1174; IWC Wage Order § 6(A); IWC Wage Order § 7(A))

Labor Code § 1174 and the relevant IWC Wage Order required the Company to accurately record and maintain "each employee's "[t]ime records showing when the employee begins and ends each work period," the time that each meal period began and ended, daily hours worked, and total hours worked in the payroll period. The Company failed to comply with these requirements, triggering civil penalties under §§ 1174.5 and/or 2699 each period.

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**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Under Labor Code § 204(a), wages are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.” As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to provide any information as to hours worked and, alternatively, failed to accurately reflect total compensable hours); failure to accurately state

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gross/net wages earned and all deductions (due to the failure to pay all required minimum/overtime and other wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start/end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment or other employees of the Company, he reserves the right to supplement this notice letter.

Respectfully,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

Mailing Address

5198 Arlington Avenue, PMB 513, Riverside, CA 92504



Toll Free
888.959.8508

Physical Address

11801 Pierce Street, Suite 200, Riverside, CA 92505

EXHIBIT “D”



CASE ASSUMPTIONS

Class Members	550
Opt Out Rate	1%
Opt Outs Received	9
Total Class Claimants	541
Subtotal Admin Only	\$8,165.43

Flat Fee Total \$8,000.00

For 550 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

October 22, 2024

Case: Dever v. Rescue 1, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **550** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	54		\$108.00
NCOA (USPS)	\$100.00	1		\$100.00
Total				\$708.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	550		\$55.00
Notice Packet & Opt-Out Form	\$1.25	550		\$687.50
Estimated Postage (up to 2 oz.)*	\$0.62	550		\$341.00
Static Website	\$200.00	1		\$200.00
Total				\$1,483.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	59		\$59.00
Remail Notice Packets	\$1.00	56		\$56.00
Estimated Postage	\$0.64	56		\$35.84
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$360.84

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Deficiency & Dispute Letters	\$10.00	3		\$30.00
Case Manager	\$85.00	2		\$170.00
			Total	\$825.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks *	\$0.85	541		\$459.85
Estimated Postage	\$0.64	541		\$346.24
			Total	\$1,941.09

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	76		\$152.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$2,847.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$8,165.43



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “E”