

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)

Gregory Mauro, Esq. (#222239)

Michael Calvo, Esq. (#314986)

Lauren Falk, Esq. (#316893)

Ava Issary, Esq. (#342252)

9880 Research Drive, Suite 200

Irvine, CA 92618

Tel.: (949) 387-7200

Fax: (949) 387-6676

Email: James@jameshawkinsaplc.com

Email: Greg@jameshawkinsaplc.com

Email: Michael@jameshawkinsaplc.com

Email: Lauren@jameshawkinsaplc.com

Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff CARLOS DELGADO,

On behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

CARLOS DELGADO, on behalf of the
general public as private attorney general,

Plaintiff,

v.

INCLUSION SERVICE, LLC., a California
Limited Liability Company and DOES 1-50,
inclusive,

Defendant.

Case No.: 23STCV31557

*Assigned to the Hon. Michael Small, Dept.
57*

**DECLARATION OF JAMES
HAWKINS IN SUPPORT OF
STIPULATION AND [PROPOSED]
ORDER APPROVING SETTLEMENT
OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS,
DISMISSING ACTION WITH
PREJUDICE**

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

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

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

1 5. During the course of the litigation, Plaintiff engaged in an informal discovery and
2 fully shared the information necessary for all sides to conduct a legitimate investigation into the
3 allegations of the action and potential defenses thereto. The Parties have reached this settlement
4 only after discovery and investigation was performed.

5 6. On January 3, 2024, the Parties participated in a day-long mediation with the
6 mediator Steve Serratore, Esq., a well-respected wage and hour class action and PAGA action
7 mediator. In preparation for the mediation, Plaintiff's counsel requested and Defendant's counsel
8 provided sample time and payroll data for the purported Aggrieved Employees, personnel and
9 employment documents. With Mr. Serratore's assistance, the Parties agreed to fully and finally
10 resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, the LWDA
11 and the Aggrieved Employees.

12 7. Being fully apprised of the value and strength of Plaintiff's claims, counsel for
13 Plaintiff and Defendant successfully negotiated a settlement of Plaintiff's claims asserted in the
14 action through arm's-length negotiations. The terms and conditions of the settlement are set forth in
15 the PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"). The Settlement
16 Agreement resolves all claims asserted in the Complaints and contemplates that both Complaints
17 will be dismissed with prejudice in exchange for the consideration set out in the Settlement
18 Agreement.

19 8. Defendant disputes and denies the allegations and claims asserted in the operative
20 Complaint, and the November 1, 2023 notice to the LWDA.

21 9. Counsel for Plaintiff and Defendant also considered the fact that the existence of
22 numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for
23 the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands
24 would far outweigh the potential benefits of additional litigation.

25 10. Based on the information and documents obtained through both formal and informal
26 discovery, Plaintiff assessed the maximum value of the limited PAGA claims to be released by the
27 settlement to be approximately \$1,280,000 (at the rate of a \$200.00 penalty for approximately 6,400
28 pay periods at issue for approximately 300 Aggrieved Employees).

1 11. This Aggrieved Employees recovery compares favorably to the estimated amount
2 of PAGA penalties given the evidence provided and the risks of liability and then penalty awards
3 at trial. As discussed further herein, California Labor Code Section 2699(e) (1) permits a Court to
4 award a lesser amount than the maximum civil penalty if based on the facts and circumstances to
5 do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

6 12. Plaintiff and Plaintiff's Counsel believe that the Settlement is a fair, adequate, and
7 reasonable resolution of this matter. Plaintiff and his counsel recognize the expense and length
8 of continued proceedings necessary to litigate the matter through trial and any possible appeals and
9 have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties
10 and delays inherent in such litigation based upon the burdens of proof. Plaintiff and his counsel are
11 also aware of the burdens of proof necessary to establish liability, both generally and in response to
12 Defendant's defenses thereto, and the difficulties in establishing Defendant's liability for, and the
13 right to recover, penalties on behalf of Plaintiff, the State of California, and the other purported
14 aggrieved employees.

15 13. The settlement is a compromise of highly disputed claims and to recover any
16 PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code
17 violations. *See Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011 U.S.
18 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
19 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
20 Labor Code by the defendant."). Here, Plaintiff would need to prove each Aggrieved Employee
21 suffered a violation for each period the employee worked in relation to (a) failure to pay minimum
22 and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure
23 to pay all wages earned and owed upon separation from Defendant's employ, (e) failure to pay
24 wages timely during employment, (f) failure to provide accurate itemized wage statements, and (g)
25 failure to reimburse necessary business expenses.

26 14. The result achieved in this case, and the monetary recovery provided by this
27 Settlement, are well-within the range of an acceptable settlement under the circumstances, especially
28 when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto Wage and*

1 *Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving the amount
2 of \$15,000 out of \$4 million toward settlement of PAGA claims); *Flores v. Dart Container Corp.*,
3 No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021)
4 (approving the amount of \$15,000 out of \$411,000 towards settlement of PAGA claims); *Dawson*
5 *v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687,
6 at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the amount of \$10,000 of \$1.1 million toward
7 settlement of PAGA claims); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017
8 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017) (approving the amount of \$20,000 of \$3
9 million gross settlement towards settlement of PAGA claims); *Nordstrom Commissions Case*, 186
10 Cal.App.4th 576, 589 (2010) (finding no abuse of discretion by the trial court in approving a
11 settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit);
12 *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at
13 *26 (C.D. Cal. June 17, 2019) (finding that courts approve PAGA settlements that fall within zero
14 to two percent of gross settlement recovery). Here, the value obtained for settlement of the PAGA
15 claims is very significant, and it will be distributed in accordance with and in fulfillment of the
16 objectives of the PAGA statute.

17 15. A crucial factor in evaluating the value of a PAGA-only case is that all PAGA
18 awards are discretionary and can be reduced by the Court.¹ California Labor Code Section
19 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on
20 the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary and
21

22 ¹ Under PAGA, courts have considerable discretion to reduce the penalty award. In *Thurman v.*
23 *Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012), the court found no
24 abuse of discretion when the trial court reduced the penalty by 30 percent based on the facts of the
25 case, ruling that “[t]o do otherwise under the particular facts and circumstances of this case would
26 be unjust, arbitrary, oppressive, and confiscatory.” Some trial courts have actually awarded no civil
27 penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App.
28 Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the
Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*,
No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA
penalties denied after trial).

1 oppressive or confiscatory.” For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
2 (2018), the Court of Appeal affirmed a judgment after trial that only provided for a PAGA penalty
3 of \$5 per pay period. Given this precedent, there is a risk at trial that any PAGA penalties awarded
4 could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA
5 claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential
6 recovery of civil penalties would be only \$229,000.

7 16. The settlement is also supported by other PAGA settlement previously approved
8 by other courts. See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No.
9 JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of
10 PAGA claims); *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist.
11 LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021) (approving the amount of \$15,000 out of \$411,000
12 towards settlement of PAGA claims); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337
13 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the
14 amount of \$10,000 of \$1.1 million toward settlement of PAGA claims); *Brown v. CVS Pharmacy,*
15 *Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017)
16 (approving the amount of \$20,000 of \$3 million gross settlement towards settlement of PAGA
17 claims); *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589 (2010) (finding no abuse of
18 discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of
19 PAGA claims that were at issue in the lawsuit); *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211
20 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (finding that courts
21 approve PAGA settlements that fall within zero to two percent of gross settlement recovery). Here,
22 the value obtained for settlement of the PAGA claims is reasonable, and it will be distributed in
23 accordance with and in fulfillment of the objectives of the PAGA statute.

24 17. Had the case not settled, the Parties would have been required to conduct extensive
25 formal written discovery, and multiple depositions of party and percipient witnesses all over the
26 State of California, to prepare the case for trial. From the inception of this litigation, Defendant
27 indicated that it would aggressively litigate this case. Even if Defendants failed to succeed on their
28 defenses, litigating a complex PAGA action is inherently expensive, and the litigation could

1 continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally, there
2 is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the State
3 of California or other Aggrieved Employees, after years of costly and labor-intensive litigation.
4 Avoiding these risks and the likelihood of future contentious litigation, which would involve
5 significant costs, favors settlement.

6 18. Defendant argued that no penalties prior to the PAGA notification should be
7 awarded because the violations were not intentional. Defendant could also argue that the
8 subsequent violations under PAGA only start to accrue after employers receive notice through a
9 citation from the Labor Commissioner, which would have significantly decreased Defendants'
10 exposure. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (holding “[u]ntil
11 the employer has been notified that it is violating a Labor Code provision ... the employer cannot be
12 presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to
13 penalties.”). *See also Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs.,*
14 *Inc.*, 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) (“For the purposes of subsequent violation penalties,
15 the issue is not whether [defendant] willfully violated the Labor Code, but rather whether a court or
16 commissioner had notified it of any violation.”); *Robinson v. Open Top Sightseeing San Francisco,*
17 *LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying “initial”
18 penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing
19 defendant was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*, 2013
20 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent violation,’ an
21 employer must have notice that it has violated the Labor Code”). As such, Defendants contends
22 that Plaintiff’s calculation are inflated not only because the “stack” penalties for a single person
23 during a single pay period, but because the penalties Plaintiff would award in each instances are at
24 an inapplicable (doubled) rate.

25 19. These defenses present a risk to the PAGA claim and the potential that some or all
26 of the PAGA penalties sought may not be awarded. While Plaintiff maintains that the PAGA claim
27 has merit, in reaching the Settlement, Plaintiff and his counsel took into account the strengths and
28

1 weaknesses of each side's position and the uncertainty associated with continued litigation, trial,
2 and/or appeals.

3 20. Defendant disputes that the penalties assessed by Plaintiff and Plaintiff's expert
4 would have been awarded. Further, it is Defendant's contention that PAGA penalties cannot be
5 stacked, and that at most just one PAGA penalty can be awarded to an aggrieved employee in any
6 one pay period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA penalties to be
7 measure by "each "each aggrieved employee per pay period"); *Smith v. Lux Retail North America,*
8 *Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading that sought the "stacking
9 of penalties"; "[f]or the single mistake of failing to include commissions in the overtime base,
10 plaintiff has asserted *five* (count them, five) separate labor code violations that could lead to
11 statutory penalties;" "is it plausible that we would really pile one penalty on another for a single
12 substantive wrong?"; noting that "no actual holding in any judicial decision has ever blessed such
13 stacking"). As such, and for this initial reason, Defendant contends that the maximum potential
14 recovery in this action is significantly lower than as stated by Plaintiff.

15 21. Defendant further argues that Plaintiff would still face significant practical
16 problems in aggregating any material exposure, as each violation would need to be proven as to
17 each person and for each period for which recovery is sought. Defendant argues that it is unlikely
18 that any significant number of current and former employees would travel to the venue of a trial,
19 stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of \$50 or
20 \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. ("wage statement
21 penalties"). For purposes of section 226, "a good faith dispute presents when there is (1)
22 uncertainty in the law; (2) representations by an authority that compliance was not required; or (3)
23 an employer's good faith mistaken belief grounded in a good faith dispute." *Magadia v. Wal-Mart*
24 *Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). "Mere recklessness" is not a basis for
25 liability. *Pedroza*, 2012 WL 9506073, *5.

26 22. Plaintiff's Counsel also took into account that even if Plaintiff prevailed on the
27 merits of the PAGA claim, Defendant could persuasively argue that the Court should exercise its
28

1 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A court
2 in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner
3 would have, as well as complete discretion to “award a lesser amount than the maximum civil
4 penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case,
5 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
6 And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial, et*
7 *al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State*
8 *Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94%
9 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)
10 (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct. Decision
11 dates July 21, 2020) (85% reduction of PAGA penalties).

12 23. Defendant contends that Plaintiff and the Aggrieved Employees were properly
13 compensated, and that they did not violate the Labor Code as to any of them. Defendant asserted
14 additional defenses to the PAGA claim as discussed above. These defenses present a risk to the
15 PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded.

16 **Individual Settlement**

17 24. The Settlement provides for an enhancement to be paid to Plaintiff in the amount of
18 \$10,000.00 in exchange for a general release of all known and unknown claims. Unlike Aggrieved
19 Employees who only releasing claims for civil penalties under PAGA, Plaintiff is releasing his
20 individual claims. In exchange for a release of these claims, the Parties agreed to an Individual
21 Settlement Payment of \$10,000. In addition, Plaintiff contributed considerable time and effort to the
22 litigation of this case in order to enforce the California Labor Code on behalf of the State of
23 California and for the benefit of other Aggrieved Employees. Plaintiff gathered and produced
24 relevant documents and information, provided the facts and evidence necessary to attempt to prove
25 the allegations, and discussed his employment with his counsel. Plaintiff assisted counsel in
26 developing the theories and evidence to prepare for mediation. He was available whenever his
27 counsel needed him and tried to obtain documents and information that would aid in the litigation
28 of the PAGA claims and pursuit of recovery on behalf of the State of California and the Covered

1 Employees.

2 25. Plaintiff as PAGA Representative has provided extensive supporting documents
3 and assisted Counsel in developing information necessary to litigate and settle this case. Plaintiff
4 also conducted record review and consultation with counsel in preparation for discovery and
5 eventual mediation, and to assist in evaluating and proving the claims.

6 26. The settlement is intended to fully and finally resolve the PAGA claims asserted
7 by Plaintiff on behalf of the State of California and aggrieved employees. This is only a settlement
8 of the PAGA claims for civil penalties, and is not a class settlement and does not release the
9 individual claims, if any, of the Aggrieved Employees. After deducting the Attorneys' Fees of
10 33.33% (\$176,550.00) and Costs (\$18,199.32), Settlement Administration Expenses not to exceed
11 (\$10,000.00) APEX Class Action Administration (the Settlement Administrator), and Plaintiff's
12 separate PAGA Representative Service Payment (\$10,000.00), the remaining Net Settlement
13 Amount is estimated to be \$320,250.68 and will be distributed to the LWDA and Aggrieved
14 Employees. An estimated \$80,062.67 (25% of the NSA) will be distributed to the Aggrieved
15 Employees on a pro rata basis, amounting to an average of \$266.88 per Aggrieved Employee. The
16 remaining \$240,188.01 (75% of the NSA) is to be distributed to the LWDA.

17 27. As set forth in the Settlement Agreement, the amount of the Settlement Sum is Five-
18 hundred thirty-five thousand dollars (\$535,000.00) or approximately 41% of the maximum
19 discretionary recoverable penalties, and includes an apportionment of attorneys' fees and costs,
20 payment to the settlement administrator, and a general release payment/enhancement award to
21 Plaintiff.

22 28. Based on their extensive experience litigating over 200 representative actions,
23 counsel for Plaintiff believes the settlement here is fair and reasonable and warrants approval by the
24 Court.

25 29. I and my firm have a great deal of experience in wage and hour class action litigation.
26 I have been certified and approved as class counsel in many other wage/hour class actions, and I am
27 currently litigating numerous others before federal and state courts. I have been working with James
28 Hawkins of James Hawkins, APLC, formerly of Hawkins & Sofonio, since the commencement of

1 my practice of law in 2002. Since then, I have been committed solely to representing Plaintiffs in
2 both individual employment litigation and complex wage and hour class actions.

3 30. In approximately 2003 to 2004, I began to focus almost exclusively in class action
4 litigation. In my practice as a class action Plaintiffs' attorney, I have been involved in litigating,
5 mediating and settling numerous wage and hour class actions dealing with class sizes ranging from
6 several hundred to several thousand class members resulting in settlements ranging from six
7 figures to multimillion-dollar settlements.

8 31. The following is a non-exhaustive list of other class action cases that I also
9 litigated: Cole, et. al. v. CRST Van Expedited, et. al.; USDC, CENTRAL DISTRICT,
10 EASTERN DIVISION- Case No.: EDCV 08-1570, Wage and Hour Class Action seeking past
11 minimum wages and meal and rest break violations for drivers of Defendant in the State of
12 California; Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour
13 Cases, Los Angeles Superior Court, Case No. JCCP 4545, Wage and Hour Class Action seeking
14 past wages for overtime, meal and rest period violations for security guards employed by
15 defendant in the State of California; Coordination Proceeding Special Title [Rule 1550(b)]
16 California Logistics Wage and Hour Cases, Los Angeles Superior Court, Case No. JCCP 4622,
17 Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for
18 misclassified drivers employed by defendant in the State of California. Gonzalez v. Robertson's
19 Ready Mix, Ltd., Riverside County Superior Court, Case No. RIC 110770, Wage and Hour Class
20 Action seeking past wages.

21 32. The following is a non-exhaustive list of class action cases in which I was either
22 counsel or co-lead counsel in which final approval and attorneys' fees were granted along with my
23 corresponding hourly rates approved by the various courts throughout my class action career:
24 Walker v. Surf City Hospitality, aka Sharkeez, et al. OCSC, No. 05CC00293, hourly rate approved
25 in 2006 at \$350.00 per hour; Padron v. Universal Protection Service, OCSC No. 05CC00013 and
26 JCCP 4480, hourly rate approved in 2008 at \$400.00 per hour; Davila v. Beckman Coulter, Inc.,
27 OCSC No. 07CC01347, hourly rate approved in 2009 at \$500.00 per hour; Perez v. Naked Juice
28 Company of Glendora, Inc., et. al., LASC No. BC387088, hourly rate approved in 2009 at

1 \$500.00 per hour; Gonzalez v. Superior Industries International, Inc., et al., LASC No. BC
2 357912, approved fees of 33.3% of total settlement amount; Wilson v. MCP Foods, Inc. aka
3 Firmenich, OCSC No. 30-2008-00065584-CU-OE-CXC, hourly rate approved in 2010 at \$500.00
4 per hour; Garcia v. Quiksilver, Inc., OCSC Case No. 30-2008-00083896-CU-OE-CXC, hourly
5 rate approved in 2011 at \$500 per hour; Guterrez, et. al. v. Hilton Hotels Corp., OCSC No. 30-
6 2009-00282002-CU-OE-CXC, hourly rate approved in 2011 at \$550.00 per hour; Sanchez v.
7 HVM LQ Management, LLC, USDC Central District No. SA CV11-00123 JAK (PJWx), hourly
8 rate approved in 2012 at \$560.00 per hour; Esquivel v. Fairmont Hotels and Resorts, U.S., Inc.,
9 Case No. 30-2010-00418849-CU-OE-CXC, hourly rate approved in 2012 at \$600.00 per hour;
10 Galvez v. Walt Disney Parks and Resorts U.S., Inc., OCSC NO. 30-2011-00473272-CU-OE-CXC,
11 hourly rate approved in 2013 at \$600.00 per hour; Fernando v. GCS Service, Inc., OCSC No. 30-
12 2011-00473162-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; Navarro v. QS
13 Wholesale, Inc., OCSC Case No. 30-2011-00462143-CU-OE-CXC, hourly rate approved in 2013
14 at \$600.00 per hour; LoCascio, et. al. v. Hertz Local Edition, SDSC Case No. 37-2015-00020830,
15 hourly rate approved in 2017 at \$750 per hour; Terrado v. Accredited Debt Relief, et. al., SDSC
16 Case No: 37-2018-00014181-CU-OE-CTL, hourly rate approved in 2018 at \$750 per hour; Singer,
17 et. al. v. M.A.C. Cosmetics, SDSC Case No. 37-2019-00033695-CU-OE-CTL, hourly rate of
18 approved in 2020 at \$850 per hour.

19 33. Our firm served as class counsel in a number of significant wage and hour
20 settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest
21 wage and hour class action settlement in California history at \$130,000,000. During this case,
22 Plaintiffs appealed a decertification order. This case involved several appeals. The appellate record
23 amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume
24 reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to
25 augment the record, and several additional letters informing the appellate court of new legal
26 authority issued after *Dukes*. The matter was argued to and submitted by the Court of Appeal on
27 September 15, 2016, and on November 21, 2016, the decertification order was reversed and the
28 case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* (“*Lubin*”), 5

1 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision
2 to the California Supreme Court. The Supreme Court denied Wackenhut's petition for review of
3 *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more
4 litigation, the parties were able to secure the 130 million settlement that was approved on October
5 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

6 34. First, the requested fees are justified by the result achieved. Plaintiff's Counsel
7 negotiated a recovery of \$535,000.00 and this result justifies the requested fees equal to 33.33%
8 of this recovery (\$176,550.00). This percentage is within the standard contingent recovery
9 percentage of one-third, and this percentage is what was expressly approved by the Supreme Court
10 in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). Second, the requested fees are
11 justified by the work performed.

12 35. A review of our firm's detailed billing system reveals that to date, our firm as
13 Counsel, on behalf of Plaintiff and the Settlement Aggrieved Employees, invested numerous
14 hours litigating this matter through the date of this declaration and have invested attorney time at a
15 rate of approximately \$90,000 in attorneys' fees. The rates charged by my firm are in line with
16 the prevailing rates of attorneys in the local legal community for similar work and, if this were a
17 commercial matter, these are the charges that would be made and presented to the client. These
18 hourly rates have been approved by Court's throughout California, including the Courts in the
19 Superior Court of California. The requested fees are reasonable.

20 36. Finally the award of litigation expenses is based upon the actual expenses incurred
21 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
22 detailed in **Exhibit C** attached hereto. Under the Agreement, Plaintiffs' Counsel will be
23 recovering litigation expenses in the total amount of \$18,199.32.

24 37. Attached hereto as **Exhibit D** is a true and correct copy of the Proposed Settlement
25 Administrator's quote to administer the terms of the settlement.

26 38. The Parties request that the Court enter the accompanying proposed order,
27 approving the Settlement as permitted by Labor Code § 2699(1), in accordance with the terms and
28 conditions of the Settlement Agreement.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on March 4, 2024 at Irvine, California.

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



James R. Hawkins

EXHIBIT A

PAGA SETTLEMENT AGREEMENT AND
NOTICE TO ALLEGED AGGRIEVED EMPLOYEES

This Settlement Agreement (“Agreement”) of claims under the Private Attorneys General Act (“PAGA”) is made by and between Plaintiff Carlos Delgado (“Plaintiff”) and Defendant Inclusion Services, LLC (“Defendant”). The Agreement refers to Plaintiff and Inclusion collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means Plaintiff’s lawsuit alleging claims under PAGA against Inclusion Services, LLC, captioned *Delgado v. Inclusion Services, LLC*, case number 23STCV31557, initiated on December 27, 2023, pending in Superior Court of the State of California, County of Los Angeles.

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

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

1.4. “PAGA Aggrieved Employees” means all part-time and full-time hourly, non-exempt employees employed by Defendant between September 23, 2022 through the date of PAGA approval or 90 days after the execution of the Memorandum of Understanding (“MOU”), whichever is sooner. Defendant represents there are approximately 300 Aggrieved Employees.

1.5. “PAGA Counsel” means James Hawkins APLC.

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

1.7. “PAGA Data” means PAGA Member identifying information in Administrator’s possession including the PAGA Member’s names, last-known mailing addresses, Social Security numbers, and number of PAGA Pay Periods.

1.8. “PAGA Member” or “PAGA Settlement Member” means a PAGA Aggrieved Employees included in the Action.

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

1.10. "PAGA Notice" means the COURT APPROVED NOTICE OF PAGA ACTION SETTLEMENT to be mailed to PAGA Members in English with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.11. "PAGA Period" means the period from September 23, 2022 through the earlier date of either PAGA approval or ninety (90) days after the execution of this settlement agreement.

1.12. "PAGA Representative" means the named Plaintiff Carlos Delgado in the operative complaint in the Action seeking Court approval to serve as a PAGA Representative.

1.13. "PAGA Representative Service Payment" means the payment to the PAGA Representative for initiating the Action and providing services in support of the Action.

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

1.15. "Defense Counsel" means Jackson Lewis P.C.

1.16. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the Court enters Judgment; (b) if no objections is filed, 30 days after entry of Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.17. "PAGA Approval" means the Court's order granting PAGA approval of the Settlement.

1.18. "PAGA Approval Hearing" means the Court's hearing on the Motion or stipulation for approval. of the PAGA Settlement.

1.19. "Final Judgment" means the Judgment Entered by the Court upon PAGA Approval of the Settlement.

1.20. "Gross Settlement Amount" means \$535,000 inclusive of all amounts to be paid to PAGA Members, the LWDA, the PAGA Penalty Amount, attorneys' fees, costs, enhancement award, and claims administration costs, which is the total amount Defendant agrees to pay under the Settlement.

1.21. "Individual PAGA Payment" means PAGA Member's pro rata share of the 25% of the Net Settlement Amount to be paid to the Aggrieved Employees, calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.22. "Judgment" means the judgment entered by the Court based upon the PAGA Approval.

1.23. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Representative Service Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to PAGA Members as Individual PAGA Payments and the LWDA with 25% to be paid to the Aggrieved Employees and 75% paid to the LWDA.

1.24. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period. Defendant represents there are approximately 6,400 Pay Periods.

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

1.26. “PAGA Notice” means Plaintiff’s November 1, 2023 letter to Defendant and the Labor and Workforce Development Agency (LWDA) providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.27. “PAGA Penalties” means the estimated total amount of PAGA civil penalties to be paid from in the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to the LWDA in settlement of PAGA claims.

1.28. “Plaintiff” means Carlos Delgado, the named plaintiff in the Action.

1.29. “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.

1.30. “Released Parties” means: Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries and affiliates.

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

1.32. “PAGA Pay Period” means any Pay Period during which a PAGA Member worked for Defendant for at least one day, during the PAGA Period.”

2. RECITALS.

2.1. On December 27, 2023, Plaintiff commenced this Action by filing a Complaint alleging a cause of action against Defendant for violations of the Private Attorneys General Act, captioned case number 23STCV31557, initiated on December 27, 2023, pending in Superior Court of the State of California, County of Los Angeles (the “Action”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3 On January 3, 2024, the Parties participated in all-day mediation presided over by Steve Serratore, Esq. which led to this Agreement to Settle the Action. Prior to mediation, Plaintiff obtained, through informal discovery, documents and data to evaluate Plaintiff's allegations.

2.4 Defense Counsel represents that the following other pending actions asserting analogous claims may be effected by the Settlement:

- Jerry Som, et al. v. Inclusion Services, LLC, et al; case number 22PSCV02910; and
- Luis Gaytan, et al. v. Inclusion Services, LLC, et al.; case number CU23-05636.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Defendant promises to pay \$535,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual PAGA Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring PAGA Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1 To Plaintiff: Service Payment to the PAGA Representative of not more than \$10,000 will be made (in addition to any Individual Payment the PAGA Representative is entitled to receive as a PAGA Member). Defendant will not oppose Plaintiff's request for a PAGA Representative Service Payment that does not exceed this amount. As part of the motion or stipulation for PAGA Approval, Counsel Fees Payment and PAGA Litigation Expenses Payment, Plaintiff will also seek Court approval for any PAGA Representative Service Payments. If the Court approves a PAGA Representative Service Payment less than the amount requested, the difference shall be added to the Net Settlement Amount. The Administrator will pay the PAGA Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the PAGA Representative Service Payment.

3.2.2 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third of the settlement, which is currently estimated to be \$176,550 and a PAGA Counsel Litigation Expenses Payment of not more than \$21,000. Defendant will not oppose requests for these payments provided that do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$10,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each PAGA Member: An Individual PAGA Payment calculated by (a) taking 25% of the Net Settlement Amount and dividing that amount by the total number of Pay Periods PAGA Pay Periods worked by all PAGA Members during the PAGA Period and (b) multiplying the result by each PAGA Member's Pay Periods.

3.2.5 Tax Allocation of Individual PAGA Payments. Since this a settlement for Penalties under PAGA, there will be no tax withholding for PAGA Member's Individual PAGA Payment and will be reported on an IRS 1099 Form. PAGA Members assume full responsibility and liability for any employee taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 PAGA Pay Periods. Based on a review of its records to date, Defendant estimates there are 312 PAGA Members who collectively worked a total of approximately 6,400 PAGA Pay Periods as of January 3, 2024.

4.2 PAGA Data. Not later than fourteen (14) days after the Court grants PAGA Approval of the Settlement, Defendant will simultaneously deliver the PAGA Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect PAGA Members' privacy rights, the Administrator must maintain the PAGA Data in confidence, use the PAGA Data only for purposes of this Settlement and for no other purpose, and restrict access to the PAGA Data to Administrator employees who need access to the PAGA Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the PAGA Data omitted PAGA member identifying information and to provide corrected or updated PAGA Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the PAGA Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted PAGA.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, if any, by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the PAGA Representative Service Payment and Payment to the LWDA.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the PAGA Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all PAGA Members (including those for whom the PAGA Notice was returned undelivered). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

4.4.3. For any PAGA Member whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the PAGA Member. The Parties, PAGA Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

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

5. RELEASES OF CLAIMS.

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

5.1. Plaintiff's Release. Plaintiff for himself only, and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences

outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.3 Release by PAGA Members: All PAGA Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative PAGA Complaint during the PAGA Period. ("PAGA Released Claims") PAGA Members do not release any other claims whatsoever other than PAGA Released Claims during the PAGA Period, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring.

6. STIPULATION FOR PAGA APPROVAL.

The Parties agree to prepare and file a stipulation for PAGA Approval.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining PAGA Approval, including: (i) a draft of the notice, and stipulation for PAGA Approval.

6.2. Responsibilities of Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Stipulation for PAGA Approval, no later than thirty (30) days after the full execution of this Agreement; and appearing in Court as necessary to advocate in favor of the Stipulation for PAGA Approval PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Apec Class Action LC (“Apex”) to serve as the Administrator and verified that, as a condition of appointment, Apex agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4. Notice to PAGA Members.

7.4.1. No later than five (5) business days after receipt of the PAGA Data, the Administrator shall notify PAGA Counsel that the list has been received and state the number of PAGA Members and PAGA Pay Periods in the PAGA Data.

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

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

7.4.4. Every PAGA Member is entitled to all benefits and bound by all terms and conditions of the Settlement, including the PAGA Members' Releases under Paragraph 6.2 of this Agreement.

7.5. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed which are contained in this Agreement or otherwise.

8. PAGA SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 315 PAGA Members and 6,400 Total PAGA Pay Periods during the PAGA period. If the total number of Covered PAGA PAGA Pay Periods within PAGA Period exceeds 6,400 PAGA Pay Periods by ten percent (10%) (*i.e.*, if the Covered PAGA PAGA Pay Periods within the PAGA Period includes more than 640 additional Covered PAGA PAGA Pay Periods), the escalator clause will trigger and the Gross Settlement Amount will increase proportionately to the number of PAGA Pay Periods beyond 10%. For instance, if the PAGA Pay Periods increase by 11% beyond 6400 PAGA Pay Periods, the Gross Settlement Amount shall increase 1% or Defendant may agree to a release end date as of the accrual of 6,400 pay periods +10%.

9. ADDITIONAL PROVISIONS.

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

9.2 Confidentiality Prior to Preliminary Approval. Plaintiff, PAGA Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, PAGA Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict PAGA Counsel's communications with PAGA Members in accordance with PAGA Counsel's ethical obligations owed to PAGA Members.

9.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any PAGA Member to object to the Settlement or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict PAGA

Counsel's ability to communicate with PAGA Members in accordance with PAGA Counsel's ethical obligations owed to PAGA Members.

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

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

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

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

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

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

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

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

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

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

9.14 Use and Return of PAGA Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 30 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final payout of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of PAGA Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of PAGA Data.

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

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

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

To Plaintiff:
JAMES HAWKINS APLC
Greg Mauro (SBN 222239)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel: (949) 387-7200
Email: greg@jameshawkinsaplc.com

To Defendant:
JACKSON LEWIS P.C.
Robert D. Vogel (SBN 63091)
725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017
Tel: (801) 736-3199
Email: Robert.vogel@jacksonlewis.com

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

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

It Is So Stipulated.

Dated: _____

Carlos Delgado

Dated: 02-03-2024

Inclusion Services, LLC

By: 
Its: Executive Director

APPROVED AS TO FORM:

Dated: _____

James Hawkins, APLC

By: _____

James Hawkins
Gregory Mauro
Michael Calvo

Attorneys for Plaintiff, Carlos Delgado

Dated: _____

JACKSON LEWIS P.C.

By: 

Robert D. Vogel
Monica H. Bullock

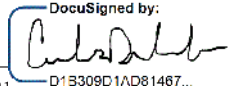
Attorneys for Defendant, Inclusion Services, LLC

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

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

It Is So Stipulated.

Dated: 2/5/2024

DocuSigned by:

 Carlos Delgado
 ID: D13309D1AD81467...

Dated: _____

Inclusion Services, LLC

By: _____
 Its: _____

APPROVED AS TO FORM:

Dated: 2/5/2024

James Hawkins, APLC

By: _____

James Hawkins
 Gregory Mauro
 Michael Calvo

Attorneys for Plaintiff, Carlos Delgado

Dated: _____

JACKSON LEWIS P.C.

By: _____

Robert D. Vogel
 Monica H. Bullock

Attorneys for Defendant, Inclusion Services, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

|

You are receiving this letter because you are entitled to money as a result of a court approved settlement in *Carlos Delgado v. Inclusion Service, LLC.*, Superior Court of the State of California, County of Los Angeles, Case No. 23STCV31557 (the “**Lawsuit**”).

What is this case about?

In the Lawsuit, Plaintiff Carlos Delgado asserted claims for civil penalties pursuant to the Private Attorneys General Act of 2004 (“**PAGA**”) Labor Code section 2698 *et seq.* against Defendant Inclusion Services LLC (“**Inclusion**”) on behalf of himself and all persons who worked for Inclusion as non-exempt, hourly employees in the State of California at any time from September 23, 2022 through the earlier date of either PAGA approval or ninety (90) days after the execution of the Settlement Agreement. These persons are known as “**PAGA Member(s)**” and this period is known as the “**PAGA Period**”. These claims are based on Inclusion’s alleged (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all wages earned and owed upon separation from Defendant’s employ, (e) failure to pay wages timely during employment, (f) failure to provide accurate itemized wage statements, and (g) failure to reimburse necessary business expenses. Inclusion denies each of these claims and contentions alleged by Plaintiff in the Lawsuit and contends that it complied with California law in all respects.

What are the terms of the Settlement?

Plaintiff and Inclusion reached a settlement of \$535,000.00, which was reviewed and approved by the Court (“the Settlement”). By operation of the Settlement’s terms, all PAGA Members will release Inclusion and other released parties from all PAGA claims and theories that were set forth or that could have been set forth based on the facts alleged in the Action during the PAGA Period for PAGA claims for civil penalties under the California Labor Code including, but not limited to, claims under California Labor Code sections 201-204, 226, 510, 512, 558, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 and related IWC Wage Orders. These claims are based on various theories of liability including, but not limited to, Inclusion’s alleged failure to pay all wages earned and owed upon separation, provide accurate written wage statements, and reimburse business expenses. The Settlement is intended only to release PAGA Members’ PAGA claims.

Upon entry of the order approving the Settlement, any PAGA Member covered by the Settlement will be barred from proceeding with any claim released by the Settlement.

Inclusion’s records reflect that you are a PAGA Member. Accordingly, you are entitled to a share of the settlement based on your percentage share of pay periods during the PAGA Period.

What should I do now?

You are automatically included in this Settlement. You may immediately deposit your enclosed settlement check and need not take any further action at this time.

EXHIBIT B

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

November 1, 2023

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

INCLUSION SERVICES, LLC
Agent for Service of Process: Tony Carrillo
7255 Greenleaf Avenue, Suite 20
Whittier, CA 90602
Receipt No. 9589 0710 5270 0838 3783 61

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff CARLOS DELGADO, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and INCLUSION SERVICES, LLC., through its Agent for Service of Process (TONY CARRILLO).

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)

Gregory Mauro, Esq. (#222239)

Michael Calvo, Esq. (#314986)

Lauren Falk, Esq. (#316893)

Ava Issary, Esq. (#342252)

9880 Research Drive, Suite 200

Irvine, CA 92618

Tel.: (949) 387-7200

Fax: (949) 387-6676

Email: James@jameshawkinsaplc.com

Email: Greg@jameshawkinsaplc.com

Email: Michael@jameshawkinsaplc.com

Email: Lauren@jameshawkinsaplc.com

Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff CARLOS DELGADO,
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CARLOS DELGADO, on behalf of the general
public as private attorney general,

Plaintiff,

v.

INCLUSION SERVICE, LLC., a California
Limited Liability Company and DOES 1-50,
inclusive,

Defendant.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff CARLOS DELGADO (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendant INCLUSIVE SERVICES, LLC., a California Limited Liability Company and DOES 1-50, inclusive (“Defendant”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendant violated various provisions of the California Labor Code. As set forth below, Defendant implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to pay minimum and overtime wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all wages earned and owed upon separation from Defendant’s employ, (e) failure to pay wages timely during employment, (f) failure to provide accurate itemized wage statements, and (g) failure to reimburse necessary business expenses. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendant because, upon information and belief, Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

1 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
2 Civil Procedure section 395. Defendant is doing business throughout California, including but not
3 limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
4 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
5 all other aggrieved employees within the State of California. Defendant employs numerous
6 aggrieved employees in in the State of California.

7 6. On information and belief, Defendant has conducted business within the State of
8 California during the purported liability period and continue to conduct business throughout the
9 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
10 similarly situated aggrieved employees within California.

11 7. The California Superior Court also has jurisdiction in this matter because on
12 information and belief there are no federal questions at issue, as the issues herein are based solely
13 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
14 California Code of Civil Procedure, the California Civil Code, and the California Business and
15 Professions Code.

16 8. On information and belief, during the statutory liability period and continuing to
17 the present ("liability period"), Defendant consistently maintained and enforced against
18 Defendant's aggrieved Employees, among others, the following unlawful practices and policies,
19 in violation of California state wage and hour laws: (a) failure to pay minimum and overtime
20 wages, (b) failure to provide meal periods, (c) failure to provide rest periods, (d) failure to pay all
21 wages earned and owed upon separation from Defendant's employ, (e) failure to pay wages timely
22 during employment, (f) failure to provide accurate itemized wage statements, and (g) failure to
23 reimburse necessary business expenses.

24 9. On information and belief, during the statutory liability period and continuing to
25 the present, Defendant has had a consistent policy of failing to pay wages including overtime
26 wages for hours worked while subject to the control of Defendant.

27 10. On information and belief, during the statutory liability period and continuing to
28

1 the present, Defendant has failed to provide meal periods to Plaintiff and aggrieved employees.
2 Defendant has also failed to provide meal premiums for missed meal periods.

3 11. On information and belief, during the statutory liability period and continuing to
4 the present, Defendant has failed to provide rest periods to Plaintiff and aggrieved employees.
5 Defendant has also failed to provide rest premiums for missed rest periods.

6 12. On information and belief, during the statutory liability period and continuing to
7 the present, Defendant has had a consistent policy of failing to timely pay wages upon separation.

8 13. On information and belief, during the statutory liability period and continuing to
9 the present, Defendant has had a consistent policy of failing to timely pay wages during Plaintiff
10 and Aggrieved Employees' employment.

11 14. On information and belief, during the statutory liability period and continuing to
12 the present, Defendant has failed to provide Plaintiff and aggrieved employees accurate itemized
13 wage statements.

14 15. On information and belief, during the statutory liability period and continuing to
15 the present, Defendant failed to reimburse necessary business expenses incurred by Plaintiff and
16 aggrieved employees.

17 16. Plaintiff on behalf of the general public as private attorney general and all other
18 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
19 enumerated under 2699.5 as follows: sections 201-204, 226, 510, 512, 558, 226.7, 1174, 1174.5,
20 1175, 1194, 1197, 1197.1, 1198, 2802 and seeking penalties, interest, attorneys' fees and costs.

21 **III. PARTIES**

22 **A. Plaintiff**

23 17. Plaintiff, CARLOS DELGADO, was at all times relevant to this action, a resident
24 of California. Plaintiff was employed by Defendant in October of 2022 until December of 2022
25 as a Non-Exempt Employee with the title of Personal Attendant and worked during the liability
26 period for Defendant, at Defendant's Whittier, CA location until Plaintiff's separation from
27 Defendant's employ in approximately December 2022. Plaintiff's duties included but were not
28

1 limited to the care of patients.

2 18. As Defendant's employee, Plaintiff, and all other aggrieved employees were
3 regularly required to and subsequently suffered:

- 4 a) to perform work subject to the control of the employer without being compensated all
5 wages including overtime, all in violation of California labor laws, regulations, and the
6 Industrial Welfare Commission Wage Order ("IWC");
- 7 b) not provided meal periods nor paid premium wages;
- 8 c) not provided first and second rest periods nor paid premium wages;
- 9 d) not paid timely upon separation from Defendant's employment;
- 10 e) not paid timely during their employment;
- 11 f) not provided accurate itemized wage statements; and
- 12 g) not reimbursed necessary business expenses.

13 19. On information and belief, Defendant willfully failed to pay all earned wages in
14 the form regular wages and overtime wages, to its Non-Exempt Employees and members of the
15 Representative Group; nor have Defendant returned to Plaintiff or members of the
16 Representative Group, upon or after separation from employment with Defendant, all wages
17 earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the
18 general public as private attorney general and all other aggrieved employees.

19
20 **B. Defendant**

21 20. Defendant, INCLUSIVE SERVICES LLC., is a California Limited Liability
22 Company that operates as a social services provider involved in supporting individuals with
23 developmental disabilities. Defendant operates in one California location. Plaintiff estimates there
24 are in excess of one hundred (100) Non-Exempt Employees who work or have worked for
25 Defendant over the last year.

26 21. Other than identified herein, Plaintiff is unaware of the true names, capacities,
27 relationships and extent of participation in the conduct alleged herein, of the Defendant sued as
28 DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant are

1 legally responsible for the wrongful conduct alleged herein and therefore sues these Defendant by
2 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
3 are ascertained.

4 22. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
5 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
6 Representative Group, and exercised control over their wages, hours, and working conditions.
7 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
8 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
9 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable
10 to the other Defendant.

11 IV. GENERAL ALLEGATIONS

12 23. At all times set forth herein, Defendant employed Plaintiff and other persons in the
13 capacity of non-exempt positions, however titled, throughout the state of California.

14 24. Plaintiff is informed and believes Aggrieved employees have at all times pertinent
15 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
16 rules and regulations of the IWC California Wage Orders.

17 25. Defendant continues to employ Non-Exempt Employees, however titled, in
18 California and implement a uniform set of policies and practices to all non-exempt employees, as
19 they were all engaged in the generic job duties related to Defendant's individual patient care
20 business.

21 26. Plaintiff is informed and believes, and thereon alleges, that Defendant are and were
22 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
23 the requirements of California's wage and employment laws.

24 27. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
25 employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
26 week.

27 28. During the relevant time frame, Defendant compensated Plaintiff and Aggrieved
28

1 employees based upon an hourly rate.

2 29. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
3 employees typically worked five (4) days a week.

4 30. Plaintiff is informed and believes that the Aggrieved employees were required to
5 keep similar schedules.

6 31. During the liability period, Defendant failed to compensate Plaintiff and Aggrieved
7 Employees for all hours worked, resulting in underpayment of minimum and overtime wages. For
8 instance, when Plaintiff arrived at the job site to relieve his coworkers, he would wait
9 approximately 15-30 minutes to be let into the facility. Plaintiff and Aggrieved Employees were
10 unable to clock in until they were inside the facility, thus their waiting time was all off the clock,
11 for which no compensation was provided. Plaintiff complained about the wait time and requested
12 to be compensated for such time, but was verbally told by Defendants' management that the time
13 waiting would not be compensated as they did not want to pay overtime.

14 32. In addition, Defendants failed to compensate Plaintiff and Aggrieved Employees
15 for off-the-clock work performed after their shifts. For instance, on a regular basis, at the end of
16 Plaintiff's shift, he was required to clock out and could not remain on the clock, and thus he had
17 to wait for his relief while off the clock. His relief would not show for approximately 10-15
18 minutes. Plaintiff and Aggrieved Employees were not compensated for this off-the-clock work.

19 33. Further, Plaintiff would receive work related phone calls from Defendant's
20 management which he was not compensated for as these calls came in while Plaintiff was off the
21 clock.
22

23 34. During the relevant time, as a consequence of Defendant' staffing and scheduling
24 practices, work demands, and Defendant' policies and practices, Defendant frequently failed to
25 provide Plaintiff and Aggrieved employees timely, legally complaint uninterrupted 30-minute
26 meal periods on shifts over five hours as required by law. Defendants maintained control over
27 Plaintiff and Aggrieved Employees during their meal periods as they were required to keep their
28 cellphones on at all times, even during their lunch periods and to respond to any calls they would

1 receive from Defendants.

2 35. On information and belief, Plaintiff and Aggrieved employees did sign a meal
3 waiver, which is no valid on six (6) plus hours.

4 36. Plaintiff and Aggrieved employees were not provided with valid lawful on-duty
5 meal periods.

6 37. Despite the above-mentioned meal period violations, Defendant failed to
7 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved employees ,
8 one additional hour of pay at their regular rate as required by California law when meal periods
9 were not timely or lawfully provided in a compliant manner.

10 38. Plaintiff are informed and believe, and thereon alleges, that Defendant know,
11 should know, knew, and/or should have known that Plaintiff and Aggrieved employees were
12 entitled to receive premium wages based on their regular rate of pay under California Labor Code
13 § 226.7 but were not receiving such compensation.

14 39. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
15 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
16 period for every four hours worked or major fraction thereof, which is a violation of the California
17 Labor Code and IWC wage order.

18 40. Defendant maintained and enforced scheduling practices, policies, and imposed
19 work demands that frequently required Plaintiff and Aggrieved employees to forego their lawful,
20 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
21 requisite rest periods were not timely authorized and permitted as a result of Defendant' failure to
22 provide relief for Plaintiff and Aggrieved employees to take their lawfully required breaks.

23 41. Despite the above-mentioned rest period violations, Defendant did not compensate
24 Plaintiff, and on information and belief, did not pay Aggrieved employees one additional hour of
25 pay at their regular rate as required by California law, including California Labor Code § 226.7
26 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized
27 and permitted. Further, Defendants maintained control over Plaintiff and Aggrieved Employees
28

1 during their rest periods as they were required to keep their cellphones on at all times, even during
2 their rest breaks and to respond to any calls they would receive from Defendants.

3 42. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
4 or should have known that Plaintiff and the other aggrieved employees were entitled to receive all
5 wages owed to them during their employment. Plaintiff and the other aggrieved employees did
6 not receive payment of all wages, including overtime and minimum wages and meal and rest period
7 premiums, within any time permissible under California Labor Code section 204.

8 43. During the relevant time period, Defendant failed to pay Plaintiff and the other
9 aggrieved employees all wages within any time permissible under California law, including, *inter*
10 *alia*, California Labor Code section 204.

11 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendant knew that at the time of termination of employment (or within 72 hours
13 thereof for resignations without prior notice as the case may be) they had a duty to accurately
14 compensate Plaintiff and Aggrieved employees for all wages owed including minimum wages,
15 meal and rest period premiums, and any associated profit shares earned by Plaintiff and Aggrieved
16 employees which Defendant had the financial ability to pay such compensation, but willfully,
17 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
18 violations.

19 45. Defendant failed to reimburse Plaintiff and Aggrieved Employees for business
20 expenses incurred pursuant to California Labor Code § 2802. Plaintiff and Aggrieved Employees
21 were not reimbursed for personal cell phone use. Such cell phone use was required for work related
22 purposes. Further, Plaintiff and Aggrieved Employees were not compensated for mileage.

23 46. Plaintiff was not reimbursed properly for mileage costs that incurred while she
24 drove from one facility location to another, which was necessary for him to complete his job duties.

25 47. Upon information and belief, Defendant knew and or should have known that it is
26 improper to implement policies and commit unlawful acts such as:
27

28 (a) requiring employees to work four (4) hours or a major fraction thereof without

1 being provided a minimum ten (10) minute rest period and without compensating the employees
2 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
3 rest period was not provided;

4 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
5 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
6 and without compensating employees with one (1) hour of pay at the regular rate of compensation
7 for each workday that such a meal period was not provided;

8 (c) failing to pay overtime and minimum wages;

9 (d) failing to pay timely wages upon separation from Defendant's employ;

10 (e) failing to pay timely wages upon during employment;

11 (f) failing to maintain accurately itemized wage statements;

12 (g) failing to reimburse necessary business expenses;

13 48. In addition to the violations above, and on information and belief, Defendant knew
14 they had a duty to compensate Plaintiff and Aggrieved employees for the allegations asserted
15 herein, and that Defendant had the financial ability to pay such compensation, but willfully,
16 knowingly, recklessly, and/or intentionally failed to do so.

17 49. Plaintiff and Aggrieved employees they seek to represent are covered by, and
18 Defendant are required to comply with, applicable California Labor Codes, Industrial Welfare
19 Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding
20 applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq.*

21 **V. REPRESENTATIVE CLAIMS**

22 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

23 50. Plaintiff incorporates by reference and re-alleges each and every allegation
24 contained above, as though fully set forth herein.

25 51. PAGA is a mechanism by which the State of California can enforce state labor laws
26 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
27 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a
28

1 law enforcement action designed to protect the public and not to benefit private parties. The
2 purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing”
3 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
4 Legislature specified that “it was...in the public interest to allow aggrieved employees, acting as
5 private attorneys general to recover civil penalties for Labor Code violations...” Stats. 2003, Ch.
6 906, section 1. Accordingly, PAGA claims cannot be subject to arbitration.

7 52. Plaintiff brings this Representative Action on behalf of the State of California with
8 respect to himself and all other individuals who are or previously were employed by Defendant as
9 non-exempt California employees during the applicable statutory period (the “aggrieved
10 employees”).

11 53. On November 1, 2023, Plaintiff complied with notice requirements pursuant to
12 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
13 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
14 that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
15 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
16 representative capacity. The substance and violations set forth in this Complaint of which the
17 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
18 Action Complaint to the LWDA.

19 54. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
20 Plaintiff brings this cause of action on behalf of all current and former California non-exempt
21 Employees of Defendant.

22 55. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
23 which Defendant are liable due to numerous Labor Code violations as set forth in this Complaint,
24 including without limitation Labor Code section 201-204, 226, 226.7, 510, 512, 558, 1174, 1174.5,
25 1175, 1194, 1197, 1197.1, 1198, 2802, and, 2698 *et seq.*, applicable IWC Wage Orders and
26 California Code of Regulations, Title 8, section 11000 *et. seq.*

27 56. Defendants violated Labor Code section 510, and 1194 by failing to compensate
28

1 Plaintiff and Aggrieved Employees for all time worked as discussed above, resulting in a
2 disproportionate underpayment of overtime wages owed. Therefore, Defendant violated section
3 510, and 1194 by not compensating its Non-Exempt Employees for work performed in excess of
4 eight hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies
5 the right to overtime compensation at the rate of one and one-half times the regular rate of pay for
6 all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to
7 overtime compensation twice the regular rate of pay for hours worked in excess of twelve (12)
8 hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular
9 work week.

10 57. Defendants also violated Labor Code sections 200-201, 1194 compensate Plaintiff
11 and Aggrieved Employees for all time worked relating to the off-the-clock work performed by
12 Plaintiff and Aggrieved Employees as discussed above, resulting in a disproportionate
13 underpayment of minimum wages owed.

14 58. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
15 period of more than five (5) hours without providing a meal break of not less than thirty (30)
16 minutes in which the employee is relieved of all of her or her duties. Also pursuant to California
17 law and the relevant IWC Wage Order(s), no employer shall require an employee to work more
18 than ten hours without being provided a second meal period, which can be waived by mutual
19 consent up until the twelfth hour.

20 59. For the Liability Period, Defendant failed to provide Plaintiff and the Aggrieved
21 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes.

22 60. Pursuant to the IWC wage orders applicable to Plaintiff and the Aggrieved
23 Employees, "Every employer shall authorize and permit all employees to take rest periods, which
24 insofar as practicable shall be in the middle of each work period.... [The] authorized rest period
25 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
26 four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as
27 hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits
28

1 an employer from requiring any employee to work during any rest period mandated by an
2 applicable order of the IWC. Defendant were required to authorize and permit employees such as
3 Plaintiff and the Aggrieved Employees to take rest periods, based upon the total hours worked at
4 a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no
5 deduction from wages.

6 61. Despite said requirements applicable to Plaintiff and the Aggrieved Employees,
7 Defendant failed and refused to authorize and permit Plaintiff and the Aggrieved Employees to
8 take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.
9 Plaintiff regularly worked shifts without properly authorized rest periods. Defendant did not pay
10 Plaintiff an hour of wages for each day that a rest period violation occurred. On information and
11 belief, the Aggrieved Employees endured similar violations as a result of Defendant's rest period
12 policies and practices.

13 62. By their failure to provide rest periods for every four (4) hours or major fraction
14 thereof worked by Plaintiff and the Aggrieved Employees, Defendant violated the provisions of
15 Labor Code sections 226.7 and the applicable IWC Wage Order(s).

16 63. Plaintiff and the Aggrieved Employees were also injured because the wage
17 statements Defendant provided to them failed to accurately state the hours worked and also to state
18 that the Aggrieved Employees were being paid one hour of pay at their regular rate for days in
19 which they were not provided with each of their authorized meal and rest periods. Defendant have
20 made it impossible to properly calculate important information from the wage statements that were
21 provided to Plaintiff and the Aggrieved Employees throughout the liability period.

22 64. Defendant also willfully violated Labor Code sections 201-203 by failing to provide
23 all owed wages at separation from employment. Labor Code sections 201 and 202 require
24 Defendant to pay their employees all wages due either at time of firing, or within seventy-two (72)
25 hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an
26 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay
27 the subject employee's wages until the back wages are paid in full or an action is commenced. The
28

1 penalty cannot exceed 30 days of wages.

2 65. Plaintiff and all other aggrieved employees who were separated from employment
3 are entitled to compensation for all forms of wages earned, including but not limited to minimum
4 and overtime wages and meal and rest break premiums but to date have not received such
5 compensation, therefore entitling them to penalties under PAGA for violations of Labor Code
6 sections 201-203.

7 66. On information and belief, Defendant willfully failed to pay all wages due and
8 owing upon separation from employment. These wages include minimum and overtime wages.

9 67. On information and belief, Defendant willfully failed to pay all wages due and
10 owing during employment in accordance with Labor Code section 204. These wages include
11 minimum and overtime wages, and meal and rest break premiums.

12 68. On information and belief, Defendant failed to provide accurate itemized wage
13 statements which failed to include all hours worked, including overtime, due and owing to Plaintiff
14 and the aggrieved employees pursuant to Labor Code section 226(a).

15 69. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
16 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
17 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
18 for each violation in a subsequent citation, for which the employer fails to provide the employee a
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
20

21 70. Additionally, Defendant have no accurate records relating to aggrieved employees'
22 work periods, total daily hours worked, total hours worked per payroll period and applicable pay
23 rates, in violation of applicable Wage Orders. Similarly, Defendant failed to maintain accurate
24 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

25 71. Labor Code § 2802 requires Defendant to indemnify Plaintiff and Aggrieved
26 Employees for necessary expenditures incurred in direct consequences of the discharge of his or
27 her duties. As a necessary part of employment, Plaintiff and on information and belief Aggrieved
28 Employees, were not adequately reimbursed by Defendant for expenses related to all expenses

1 incurred as a result of their personal vehicle usage, as described above. Despite these realities of
2 the job, Defendant failed to provide reimbursements.

3 72. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
4 implied, made by any employee to waive the benefits of this article or any part thereof is null and
5 void, and this article shall not deprive any employee or his or her personal representative of any
6 right or remedy to which he is entitled under the laws of this State.

7 73. As a result of Defendant’s unlawful conduct, Plaintiff and aggrieved employees are
8 entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
9 worked.

10 74. Plaintiff and the Representative aggrieved Employees are entitled to recover
11 Penalties and attorneys’ fees and costs under Labor Code section 2698, et. seq.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

- 14 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 15 2. For reasonable attorneys’ fees and costs; and
- 16 3. For such other and further relief as the Court deems proper.

17

18 Dated: November 1, 2023

JAMES HAWKINS APLC

19

20 By: _____

21 JAMES R. HAWKINS, ESQ.
22 GREGORY MAURO, ESQ.
23 MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

24 Attorneys for Plaintiff CARLOS DELGADO
25 on behalf of the general public as private
26 attorney general
27
28

EXHIBIT C

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 01/25/2024
Client: DELGADO002 - Carlos Delgado
Matter: INCLUSION OO1 - Inclusion Services LLC- Carlos Delgado

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Balance Forward:			\$0.00						
11/01/2023	FST	First Legal Network - Filing - Complaint, Civil Case Cover Sheet, Summons, Notice and acknowledgment of Receipt IN#30260163	\$1,702.15		Unbilled				
11/21/2023	MED	Mediation Services CK#11306	\$14,000.00		Unbilled				
01/11/2024	EXA	Expert Analysis IN#240103 CK#11432	\$1,850.00		Unbilled				
Total:			\$17,552.15	\$0.00					
Balance:			\$17,552.15						
Total Fees Billed- -----		\$0.00							
Total Fees Unbilled : -----		\$0.00							
Total Fees Received : -----		\$0.00							
Total Soft Cost Billed : -----		\$0.00							
Total Soft Cost Unbilled : -----		\$0.00							
Total Soft Cost Received : -----		\$0.00							
Total Hard Cost Billed : -----		\$0.00							
Total Hard Cost Unbilled : -----		\$17,552.15							
Total Hard Cost Received : -----		\$0.00							
Total Taxes Billed : -----		\$0.00							
Total Taxes Unbilled : -----		\$0.00							
Total Taxes Received : -----		\$0.00							
Total Late Charges Billed : -----		\$0.00							
Total Late Charges Unbilled: -----		\$0.00							
Total Late Charges Received : -----		\$0.00							
Trust Balance: -----		\$0.00							

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 01/25/2024

Client: DELGADO002 - Carlos Delgado

Matter: CROSS COUNTRY2 - Inclusion Services LLC PAGA - Carlos Delgado

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Balance Forward:			\$0.00						
11/01/2023	FIL	Filing Fee - LWDA Filing Fee	\$75.00		Unbilled				
11/01/2023	POS	Postage - Crs to Agent(s) re LWDA Filing	\$9.97		Unbilled				
12/27/2023	FST	First Legal Network - Filing - Complaint, Summons, Civil Case Cover IN# 30263586	\$562.20		Unbilled				
Total:			\$647.17	\$0.00					
Balance:			\$647.17						
Total Fees Billed- -----		\$0.00							
Total Fees Unbilled : -----		\$0.00							
Total Fees Received : -----		\$0.00							
Total Soft Cost Billed : -----		\$0.00							
Total Soft Cost Unbilled : -----		\$0.00							
Total Soft Cost Received : -----		\$0.00							
Total Hard Cost Billed : -----		\$0.00							
Total Hard Cost Unbilled : -----		\$647.17							
Total Hard Cost Received : -----		\$0.00							
Total Taxes Billed : -----		\$0.00							
Total Taxes Unbilled : -----		\$0.00							
Total Taxes Received : -----		\$0.00							
Total Late Charges Billed : -----		\$0.00							
Total Late Charges Unbilled: -----		\$0.00							
Total Late Charges Received : -----		\$0.00							
Trust Balance: -----		\$0.00							

EXHIBIT D

**Quotation Request:**

Greg Mauro
James Hawkins ALPC
greg@jameshawkinsaplc.com
949.387.7200

Case Name:

Delgado v. Inclusion Services

Date:

Thursday, January 25, 2024

RFP Number:

72000025

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	300
Certified Language Translation:	Yes
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	3	\$375.00
Data Analyst	Per Hour	\$150.00	3	\$450.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$825.00
Project Management				
Project Management	Per Hour	\$150.00	3	\$450.00
Project Coordinator	Per Hour	\$90.00	3	\$270.00
Data Analyst and Reporting	Per Hour	\$140.00	2	\$280.00
Sub Total:				\$1,000.00
Toll-Free Contact Center, Website, Reporting & Pre-Distribution				
Form Set Up	Per Hour	\$120.00	2	\$240.00
Bilingual Toll-Free Contact Center	Static Rate	\$165.00	1	\$165.00
NCOA Address Update (USPS)	Static Rate	\$123.00	1	\$123.00
Certified Language Translation: Spanish	Static Rate	\$1,250.00	1	\$1,250.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$1,778.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Distribution & Settlement Fund Management

Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	4	\$480.00
Account Management and Reconciliation	Per Hour	\$140.00	4	\$560.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$2.50	300	\$750.00
USPS First Class Postage	Per Piece	\$0.89	300	\$267.00
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$3.50	60	\$210.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	12	\$1,200.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,500.00	1	\$1,500.00
Sub Total:				\$4,967.00

Post Distribution Reconciliation

Bank Account Reconciliation	Per Hour	\$135.00	4	\$540.00
Project Management Reconciliation	Per Hour	\$100.00	4	\$400.00
Declarations	Per Hour	\$120.00	4	\$480.00
Sub Total:				\$1,420.00

WILL NOT EXCEED: \$9,990.00

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. Services: Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. Payment Terms: As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. Incurred Expenses: In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. Invoicing: Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. Case Duration: The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. Termination of Services: Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. Independent Contractor: As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.
9. Limitation of Liability: The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. Indemnification: The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. Confidentiality: Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the party's concerning confidentiality. These terms may only be amended in writing and signed by both parties.
12. Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.
13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.
14. COMPLETE AGREEMENT. These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.
15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.
16. Force Majeure: In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.
17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.
18. Severability: This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.
19. Nonwaiver: This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.