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on behalf of himself and others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

RICHARD A. AZHOCAR, an individual, on
of himself and others similarly situated,

Plaintiff,

vs.

ACCEL FRAMING, INC, a California stock
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2023-00053185-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Marcella O. McLaughlin

Dept.: C-72

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

Date: April 10, 2026

Time: 9:30 a.m.

Location: Department C-72

Original Complaint Filed: December 06, 2023

Amended Complaint Filed: August 20, 2025

Trial Date: none set

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1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiff Richard A. Azhocar (“Plaintiff”), on behalf of himself and other similarly situated employees of Defendant Accel Framing, Inc. (“Defendant”) (collectively, “the Parties”).

2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiff’s Motion for Preliminary Approval of the Parties’ Class and PAGA Action Settlement Agreement (“Motion”). A true and correct copy of the Parties’ Class and PAGA Action Settlement Agreement (“Settlement Agreement”) is attached hereto as **Exhibit 1**.

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3. On December 6, 2023, Plaintiff commenced a Class Action by filing a Complaint alleging twelve causes of action against Defendant for ((1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Violations Under Labor Code § 226.7; (4) Rest Period Violations Under Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation Labor Code § 221; (7) Violation Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required Under Labor Code §§ 1174, 1174.5; (10) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and (12) Violation of California Business and Professions Code § 17200 *et seq.* (the “Action”). Plaintiff gave timely written notice to Defendant and California’s Labor and Workforce Development Agency (“LWDA”) by sending the PAGA Notice also on December 6, 2023 (LWDA-CM-998240-23). The PAGA Notice is attached hereto as **Exhibit 2**. On August 8, 2025, after the 65-day statutory period had passed, Plaintiff filed his First Amended Complaint, which added an eleventh cause of action for penalties under PAGA, Labor Code §2698.

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causes of action alleged. On June 10, 2025, after exchanging and reviewing informal discovery, the Parties participated in a mediation presided over by Kelly Knight, Esq., and reached settlement.

Plaintiff's Claims And Defendant's Denials

5. Plaintiff's claims are based on Defendant's alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to reimburse business expenses, failure to pay final wages when required, and failure to provide accurate wage statements.

6. Specifically, Plaintiff alleges that Defendant did not have a timekeeping method for tracking actual time worked by Class Members, but instead required Plaintiff and Class Members to sign in with only their name and signature on a sign in sheet after a required morning meeting and then inputted shift start and end times at the end of each work week. Plaintiff alleges that Defendant's managers and foremen then inputted Class Members' scheduled shift start and end time into Defendant's timekeeping records at the end of each work week, relying on Plaintiff and Class Members' scheduled shift times rather than the actual times they began and ended work. Plaintiff also alleges that Defendant had a uniform policy of requiring Plaintiffs and Class Members' to arrive prior to their scheduled shift start times to prepare for the start of their shifts and would be reprimanded when not. This included searching for the jobsite and unloading tools and equipment in the areas assigned for the day.

7. Defendant contend that it did not require off the clock work or have a time rounding policy, paid for all reported hours worked, paid wages at the proper rates, that Class Members were instructed to record all hours worked, and that any off-the-clock work was performed without Defendant's knowledge and de minimis and therefore not compensable. Defendant also argues that given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory.

8. Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff and Class Members. For example, due to work demands, Plaintiff alleges that Plaintiff and Class Members were often unable to take a duty-free 30-minute meal break during their shifts, and that

1 many meals were systematically taken late. Furthermore, Plaintiff alleges that their meal periods
2 were constantly interrupted by work-related demands and tasks that required Plaintiff and Class
3 Members to remain under Defendant's control during breaks.

4 9. Defendant contends that Class Members were given a reasonable opportunity to take their
5 meal periods, and informed that they should report any missed meal periods to Defendant so that
6 they could be properly compensated. Defendant also contends that the meal break claim requires
7 individualized inquiries which would preclude class certification. If Defendant's contentions are
8 proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on
9 the meal break claim.

10 10. Plaintiff also contends that Defendant did not provide Class Members with paid 10-
11 minute rest breaks for every four hours or major fraction thereof. Plaintiff contends that Class
12 Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid
13 rest breaks of not less than ten minutes for each consecutive four-hour shift but were required to
14 work through their rest breaks during their shifts due to heavy work demands from Defendants.

15 11. Similar to meal breaks, Defendant contends that Class Members were (1) advised of their
16 right to rest periods, (2) given a reasonable opportunity to take their rest periods during their shifts,
17 and (3) informed that they should report any missed rest periods to Defendant so that they could be
18 properly compensated. Considering that unlike meal periods, rest breaks need not be recorded, these
19 violations would likely be difficult to prove at trial and potentially depress the damages ultimately
20 awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break
21 claim.

22 12. Additionally, Plaintiff alleges that Defendants required Plaintiff and Class Members to
23 use their personal cellular phones for work-related business, for which they were not reimbursed.
24 Defendants maintained that Plaintiff and Class Members were not required to use their personal cell
25 phones to perform their job duties and were advised to seek reimbursement if they were required to
26 use their own personal devices. Defendants further contend that individualized issues relating to this
27 claim would preclude class certification.

28 13. As for the wage statement and waiting time penalties claims, Defendant contends that

1 these claims are merely derivative of the underlying claims and that Plaintiff and Class Members
2 would be unable to first establish liability for the underlying claims for the reasons described above.
3 Defendant further contends that even if they could first establish liability for the underlying claims,
4 Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and
5 knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate
6 wage statements and pay all wages due to Plaintiff and Class Members. Thus, Defendant contends
7 that the wage statement and waiting time penalties claims to have little to no value.

8 14. Similarly, Defendant contends that the PAGA claim is also derivative of the underlying
9 claims in the Action and ultimately fails because the underlying claims have no merit. Defendant
10 also contends that even if Plaintiff and Class Members could establish Labor Code violations, the
11 Court has the discretion to award less than the maximum civil penalty amount and would award
12 substantially less civil penalties here because Defendant acted in good faith to comply with the
13 relevant wage and hour laws and any violations were minor and technical in nature. Defendant also
14 contend that trial of the PAGA claim would be unmanageable.

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

20 **Investigation**

21 16. Before filing the lawsuit, Class Counsel conducted a thorough investigation and
22 researched the facts and circumstances underlying the pertinent issues and applicable law. This
23 required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to
24 the above-described research into the various legal issues involved in the case. After filing the
25 lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the
26 action, including (1) conducting informal discovery and meeting and conferring with defense
27 counsel about same; (2) reviewing and analyzing records and data, as well as employment-related
28 policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff

1 regarding potential Class Members; (5) researching the applicable law and potential defenses; (6)
2 constructing damage models based on interpretations of California law and the facts and numbers
3 provided by Defendant; and (7) reviewing information provided by Defendant in response to
4 informal discovery and in advance of the mediation. The Parties conducted their own evaluations of
5 the potential recoveries based on the claims alleged in the Action, including consulting experts.

6 17. Defendants, for their part, vigorously contested liability, the amount of claimed
7 damages, and the propriety of class certification. After analyzing the relevant documents and other
8 gathered data, Class Counsel believed that this case was appropriate for resolution via mediation.
9 Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims
10 and explore the possibility of settlement.

11 **Settlement Efforts**

12 18. On June 10, 2025, the Parties participated in an all-day mediation with Kelly Knight,
13 Esq., a respected and experienced mediator in wage and hour class actions. During mediation,
14 counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of litigation
15 and the risks to both parties of proceeding with a class certification motion, as well as the law unpaid
16 wages, meal periods, rest periods, wage statements, final pay, and reimbursement. Following a full
17 day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit through a
18 mediator's proposal. The Parties continued to work together to finalize a long-form settlement
19 agreement, which resulted in the Settlement Agreement now before the Court for approval.

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

28 **Summary of the Settlement**

20. Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay \$240,000.00 (Two Hundred Forty Thousand Dollars with Zero Cents) (“Gross Settlement Amount” or “GSA”) on a non-reversionary basis. (Exhibit 1, Settlement Agreement, ¶ 53.) In addition to and separate from the Gross Settlement Amount, Defendant will pay the employers’ portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. The Settlement Agreement defines the “Class” as all non-exempt, hourly individuals that worked for Defendant in California during the Settlement Class Period, which is December 6, 2019, through August 11, 2025. (Exhibit 1, Settlement Agreement, ¶ 5), and the “Participating Class Members” are members of the Class who do not submit valid and timely requests for exclusion from the Settlement. (Exhibit 1, Settlement Agreement, ¶ 36.) The Settlement Agreement also defines “Aggrieved Employees” as all Class Members who worked during the PAGA Period, which is December 6, 2022, through August 11, 2025. (Exhibit 1, Settlement Agreement, ¶ 4.) The “Net Settlement Amount” means the Gross Settlement Amount less Court-approved PAGA Penalties, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Settlement Administration Costs. (Exhibit 1, Settlement Agreement, ¶ 28.) The remainder is to be paid to Settlement Class Members as Individual Settlement Payments. (*Id.*) These amounts are detailed as follows:

- Class Counsel Award: Up to one-third of the Gross Settlement Amount, that is up to \$80,000.00 for attorneys’ fees, plus reasonable litigation costs and expenses incurred in the action¹ (Exhibit 1, Settlement Agreement, ¶ 57.2);
- Class Representative Enhancement Award: Up to \$5,000.00 to Plaintiff as an enhancement for service as the class representative (Exhibit 1, Settlement Agreement, ¶ 57.1);
- Settlement Administration Costs: Up to \$12,500.00 to the Settlement Administrator for its fees and costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 57.3);
- PAGA Payment: \$16,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the PAGA Employees (\$4,000.00) to be paid on a pro rata basis to the PAGA Employees based on the number of pay periods each PAGA Employee worked during

¹ Class Counsel’s costs are currently estimated to be \$17,831.95.

the PAGA Period (“Individual PAGA Payment”) and 75% allocated to the LWDA (\$12,000.00) will be paid to the LWDA (“LWDA Payment”) (Exhibit 1, Settlement Agreement, ¶ 57.5)

21. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **\$108,668.05**. Each Settlement Class Member’s share of the Net Settlement Amount (“Individual Settlement Payments”) will be calculated based on the number of workweeks the Class Member worked in a non-exempt, hourly position during the Settlement Class Period. (Exhibit 1, Settlement Agreement, ¶ 57.4.) For the 675 Settlement Class Members estimated as of the date of the Parties’ Memorandum of Understanding, the average gross Individual Settlement Payment share, using a straight average, is \$160.99. If the Court approves a lesser amount for any of the above-requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Settlement Class Members. (Exhibit 1, Settlement Agreement, ¶¶ 57.1-57.3.)

22. The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, to all Class Members in no event later than fourteen (14) calendar days after receiving the Class Data via first-class United States Postal Service (“USPS”) mail. (Exhibit 1, Settlement Agreement, ¶ 77.2.) The Class Notice provides each Class Member’s starting and ending dates of employment in a class position during the Class Settlement Period, the number of Workweeks, and the Settlement Administrator’s calculation of each Class Member’s estimated Individual Class Payment and Individual PAGA Payment. (Exhibit 1, Settlement Agreement, ¶ 77.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of Workweeks and/or pay periods attributed to each Class Member per Defendant’s records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.) Class Members will have forty-five (45) days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of Workweeks and/or pay periods. (Exhibit 1, Settlement Agreement, ¶ I¶¶ 44, 77.4.) Class Members who received a re-mailed Class Notice shall have their

Response Deadline extended fourteen calendar (14) days from the original Response Deadline. (Exhibit 1, Settlement Agreement, ¶ 77.4.)

23. Defendant will fund the Gross Settlement Amount by making installment payments to the Qualified Settlement Fund established by the Settlement Administrator over a period of six months. (Exhibit 1, Settlement Agreement, ¶ 54.) The first payment of \$60,000.00 will be made within 30 days of the Court's order granting preliminary approval of the Settlement and then every six (6) months thereafter until the Gross Settlement Amount is fully funded. Plaintiff agreed to this payment installment plan to maximize the Gross Settlement Amount while also considering Defendant's financial circumstances and ability to fund the settlement.

Certification for Settlement Purposes Only is Appropriate

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

25. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all members is impractical. Class Members are all non-exempt, hourly individuals that worked for Defendants in California during the Settlement Class Period, which is the period from December 6, 2019, through August 11, 2025. Defendant has identified 675 Class Members based on a review of its payroll and personnel records as of the date of the Parties' mediation. Thus, there is numerosity and ascertainability.

26. Well-Defined Community of Interest. Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of

1 the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*,
2 a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay
3 wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure
4 to reimburse business expenses, failure to pay final wages when required, and failure to provide
5 accurate wage statements. Plaintiff contends Defendant's practices affected Class Members in the
6 same way and presents questions that are suitable for common adjudication because all Class
7 Members were subject to the same employment policies and practices. The outcome of litigation in
8 this matter depends upon questions that are common to Class Members.

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

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

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

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

4 30. Plaintiff contends that class resolution is superior to other available methods for the
5 fair and efficient adjudication of the controversy as there is little interest or incentive for Class
6 Members to individually control the prosecution of separate actions. Although the alleged injury
7 resulting from Defendant's policies and practices is allegedly real and significant, the cost of
8 individually litigating each such case against Defendant would easily exceed the value of any relief
9 that could be obtained by any one Class Member individually. If Class Members are forced to litigate
10 their claims individually, this would result in over 675 individual actions against Defendant. Here,
11 the alternative methods of resolution are individual suits for relatively small amounts. Hence, an
12 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
13 dwarf a potential recovery.

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

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

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

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

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

8 **B. Extent of Discovery and Stage of Proceedings.**

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

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

15 34. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the
16 Action have merit, they also acknowledge the expense and delay of continued litigation. Although
17 the Parties engaged in significant informal discovery in advance of mediation, the Parties still had
18 significant discovery to complete had the matter not settled. This would have required the
19 expenditure of substantial time and resources by both Parties that would have very likely spanned
20 several years, which would have further weakened Defendant’s financial condition and significantly
21 restricted its ability to pay any judgment. Even if Plaintiff were to certify the class, the Parties would
22 incur considerably more attorney fees and costs through a possible decertification motion, trial, and
23 possible appeal. This Settlement avoids those risks and the accompanying expense.

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

25 35. Plaintiff has not yet filed his motion for class certification, and as such, the extent to
26 which Plaintiff proposed class was certifiable is somewhat speculative. Absent a settlement, there
27 was a risk that there would not be a certified class at the time of trial, or if there were, it could consist
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1 of a significantly smaller group of employees than the proposed Class, resulting in less overall
2 recovery.

3 36. Finally, in class actions, decertification is always a possibility, and there is always a
4 risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat.*
5 *Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions
6 and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial
7 would have also required expert witnesses, the accrual of extensive litigation costs, and the
8 commitment of extensive further time and financial resources. Finally, given the complexity and
9 unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy
10 and costly appeal. An appeal would result in further delay for the Class Members who have already
11 waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any
12 litigation, and this Settlement was the product of compromise accounting for those risks and that
13 uncertainty.

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

15 37. On March 16, 2026, Plaintiff submitted the Settlement Agreement and this Motion
16 and supporting documents to the LWDA. A true and correct copy of the confirmatory email from
17 the LWDA is attached hereto as **Exhibit 3.**

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

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

24 39. The strength of the Plaintiff's case in light of the settlement amount is deemed by
25 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
26 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay wages
27 (including overtime), failed to provide meal and rest breaks, failed to provide accurate wage
28 statements, failed to provide waiting time penalties, and failed to pay final wages when required in

1 violation of California law. Plaintiff provided substantial discounts to Class Counsel's estimate of
2 Defendant's estimated liability exposure taking into account Defendant's above assertions and
3 ability to pay.

4 40. Based on an analysis of Plaintiff's time and pay records and a sampling of time and
5 pay records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as
6 follows: **\$44,294.03** for unpaid wages claims, including minimum and overtime wages, due to off
7 the clock work; **\$41,139.60** for meal period violations; **\$39,075.00** for rest period violations;
8 **\$59,185.00** for wage statement penalties; **149,546.15** in waiting time penalties; **\$6,750.00** for
9 reimbursement; and **\$60,000.00** for PAGA penalties. As such, the total estimated realistic exposure
10 Defendant could face is **\$399,989.78**. Summary calculations for estimated liability for each of these
11 claims follow.

12 Failure to Pay Minimum and Overtime Wages:

13 41. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
14 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
15 eight hours in a day and 40 hours in a week. Defendant contended that it did not require off the clock
16 work, paid for all reported hours worked, any alleged off the clock work was performed without
17 Defendant's knowledge, and that it paid wages at the proper rates. Defendant also argued that given
18 their written policies and practices, any unrecorded hours are likely subject to individualized inquiry
19 and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a
20 significant discount to damages based on this theory.

21 42. Class Counsel estimated Defendant's exposure on the unpaid wages claims to be
22 approximately \$442,940.25 (assuming 5 minutes of off the clock work per shift and 93.9% of off
23 the clock hours attributable to overtime). However, given Defendant's defenses and the potential
24 hurdles facing certification of off-the-clock claims, Class Counsel applied a 90% discount making
25 for an adjusted realistic exposure of **\$44,294.03** for Defendant.

26 Meal Periods and Rest Breaks:

27 43. Plaintiff argued that Defendant had a common practice and policy of denying compliant
28 meal periods as Defendant's timekeeping system, Plaintiff alleges, would not permit Plaintiff and

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

10 44. Defendant contends that Class Members were given a reasonable opportunity to take their
11 meal periods, and when compliant meal periods were not provided, Defendant provided premium
12 pay to Class Members as reflected in their time and pay records. Defendant further contends that
13 the meal break claim requires individualized inquiries which would preclude class certification. If
14 Defendant’s contentions are proven true and prevail in trial, the likely outcome would be no
15 recovery for the Class Members on the meal break claim.

16 45. Class Counsel estimated Defendant’s maximum exposure on the meal period claim at
17 approximately \$411,396.00 for unique meal break violations. However, given Defendant’s defenses
18 and the potential hurdles facing certification of the meal break claim, Class Counsel applied a 90%
19 discount making for an adjusted realistic exposure of **\$41,139.60** for Defendant.

20 46. Rest Breaks: Plaintiff contends that Defendant did not provide Class Members with
21 timely paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiffs contend
22 that job requirements and duties required of Class Members consistently manifested in a failure to
23 authorize and permit Class Members to take all their required rest breaks. Defendant maintains that
24 it did provide a reasonable opportunity for Class Members to take duty-free rest breaks during their
25 shifts and dispute all allegations that rest breaks were not provided. Considering that unlike meal
26 periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial
27 and potentially depress the damages ultimately awarded.

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1 47. Class Counsel estimated Defendant's maximum liability exposure on the rest break
2 period claim at approximately \$781,500.00 (25,000 workweeks x one rest break violation per
3 workweek x \$31.26 average hourly rate). However, given Defendant's contentions and the
4 difficulties facing certification of rest break claims, Class Counsel applied a 95% discount making
5 for an adjusted realistic exposure of **\$39,075.00** for Defendant. Owing to the arguments above and
6 the fact that the recording of rest periods is not required, this claim was substantially discounted.

7 Inaccurate Wage Statement Violations:

8 48. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial
9 violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of
10 \$4,000 per employee. Plaintiff alleges that Defendant made it difficult to account with precision for
11 the unlawfully withheld wages and meal and rest period compensation owed during the liability
12 period, because it did not implement and preserve a record-keeping method as required.

13 49. Defendants challenged Plaintiff's claim for penalties under the Labor Code, including by
14 arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to
15 prove the underlying claims could result in the dismissal of these derivative claims. Defendant also
16 argued that it did not knowingly and intentionally commit these alleged violations. *See, e.g.*, Labor
17 Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure
18 by an employer").

19 50. Class Counsel's expert estimated Defendant's maximum total exposure on the section
20 226 claim at approximately \$1,183,700 (assuming \$50/\$100 for initial and subsequent violations
21 and 982 employees during the relevant period and a maximum of \$4,000.00 per employee). After
22 considering Defendant's contentions and the potential class certification issues, Class Counsel
23 discounted this amount by 95% to get an adjusted realistic exposure of **\$59,185.00**.

24 Failure to Pay Final Wages at Termination or Separation:

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

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

7 53. Defendant challenged this claim under Labor Code § 203 with several arguments,
8 including that this claim is merely derivative of the other claims that lacked merit and that under
9 Labor Code § 203, employers are only obligated to pay waiting-time penalties if they "willfully"
10 fail to pay wages due and owing at the time of termination or resignation. As Title 8, California
11 Code of Regulations, § 13520 states: "A willful failure to pay wages within the meaning of Labor
12 Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when
13 those wages are due. However, a good faith dispute that any wages are due will preclude imposition
14 of waiting time penalties under Section 203." Defendant argued that its good faith disputes and lack
15 of willfulness would excuse its violations. Defendant maintained that because it had viable defenses
16 in both law and fact, such penalties were subject to a three-year limitations period under Labor Code
17 § 203(b).

18 54. Class Counsel's expert estimated Defendant's maximum total exposure on the section
19 203 claim at approximately \$2,990,923.00 (410 terminated employees during the relevant period x
20 30 days x average hourly rate per year x 7.8 hours per work day). Given the foregoing arguments,
21 Class Counsel discounted this amount by 95% to get an adjusted realistic exposure of
22 **\$149,546.15.**

23 Failure to Reimburse for Necessary Business Expenditures:

24 55. Under Labor Code § 22802(a) Defendant must indemnify Plaintiff and Class Members
25 for all necessary expenditures or losses incurred in direct consequence of the discharge of their
26 duties. As discussed above, Plaintiff alleges that Plaintiff and Class Members incurred necessary
27 expenditures in the performance of their job duties for Defendant, including the cost of personal
28 cell phone usage for work related purposes, but were not reimbursed for those expenses by

1 Defendant. Defendant contends that it did not require Class Members to use their personal cell
2 phones for work and that any such expenses were not required to be reimbursed under the law.
3 Defendant further contends that it had an expense reimbursement policy and did reimburse
4 Plaintiff and Class Members for any business expenses incurred pursuant to their policy.

5 56. Plaintiff estimated Defendant's total exposure on the unreimbursed business expenses
6 claim at approximately \$33,750.00 (\$50 x 675 Class Members). However, given Defendant's
7 reimbursement policy and the potential for the need for individualized inquiries making class
8 certification of this claim difficult, Class Counsel applied an 80% discount to get an adjusted
9 realistic exposure of **\$6,750.00**.

10 PAGA Penalties:

11 57. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows
12 Plaintiff to obtain civil penalties on behalf of himself and other aggrieved employees for
13 Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5.
14 Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil
15 penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each
16 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
17 aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i),
18 seventy-five percent (75%) of the penalties recovered must be allocated to the Labor and Workforce
19 Development Agency (LWDA), with the remaining twenty-five percent (25%) allocated to the
20 affected employees. The limitations period for all penalties is one year prior to the filing of the
21 complaint.

22 58. Defendant staunchly contested Plaintiff's claim for PAGA penalties. The provisions of
23 the Labor Code potentially triggering PAGA penalties in this case include but are not limited to
24 Labor Code §§ 203, 226, 510, and 1194. PAGA penalties are not mandatory but permissive. Labor
25 Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty
26 amount specified by this part if, based on the facts and circumstances of the particular case, to do
27 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (See
28 *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by

30% under this provision) (emphasis added); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to \$375,000).). In departing from the \$100.00/50.00 per pay period calculation to arrive at the \$16,000.00 PAGA Penalties amount in this case, Plaintiff considered various reasons why the Court may reduce any eventual recovery at its discretion and considered that PAGA penalties are not mandatory but permissive.

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

60. Class Counsel estimated Defendant's total exposure on the PAGA claim at approximately \$600,000.00 (12,000 PAGA Pay Periods x \$50). However, Class Counsel also estimated any PAGA recovery would be substantially reduced and applied discounts in light of the countervailing arguments with regard to the other causes of action and the Court's power to award "a lesser amount than the maximum civil liability." As such, Class Counsel applied a discount of 90% to get a total realistic exposure of \$60,000.00. The PAGA allocation agreed upon by the Parties therefore was **\$16,000.00**, subject to the Court's final approval. 75% of that amount (\$12,000.00) will be paid to the LWDA out of the Gross Settlement Amount, and the remaining 25% (\$4,000.00) will remain in the PAGA Settlement Fund for distribution to the Aggrieved Employees.

61. The Gross Settlement Amount of \$240,000.00 represents a recovery for the Class of approximately 60% of the total realistic exposure Class Counsel estimated that Defendant could face on the primary claims in this case. Plaintiff and Class Counsel submit that this is an excellent

1 result in the face of uncertainty and the prospects of protracted and contested litigation through class
2 certification, summary judgment, and trial, and particularly in light of Defendant's ability to pay.

3 **Summary**

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

10 63. Class Counsel applied reasonable and justified discounts, considering the facts and legal
11 contexts outlined above. These substantial discounts were necessary, especially considering
12 Defendant's financial condition and ability to pay, which was a critical factor in the decision-
13 making process for the Settlement and payment plan. In addition, Defendant argued that given
14 Defendant's written policies, practices, and unrecorded hours are likely subject to individualized
15 inquiry, making the certification of all Class Members less than a certainty. This Settlement, like
16 most others, was the product of compromise. As addressed above and by adding up numbers,
17 Plaintiff estimated that Defendant faced approximately \$399,989.78. in total liability exposure on
18 Plaintiffs' main claims. The Gross Settlement Amount of \$240,000.00 therefore represents a
19 recovery for the Class Members of approximately 60% of the total maximum liability exposure
20 Class Counsel estimated Defendant could face on these class-wide claims. Class Counsel submits
21 that this is an optimal result for the Class in light of all of the factors described above.

22 **Class Representative Service Award is Fair and Reasonable**

23 64. Plaintiff spent significant time better apprising himself of his rights, deciding whether
24 remedial action should be taken and how it should be taken, searching for attorneys, and contacting
25 Class Counsel, who spent many hours with Plaintiff discussing the case and the law. Both before
26 and after filing this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this
27 case. Plaintiff has provided Class Counsel with information about Defendants, reviewed documents,
28 consulted Class Counsel throughout the litigation, participated in the mediation process, and

1 reviewed and signed the settlement agreement. Plaintiff has diligently, adequately, and fairly
2 represented the Class Members, and has not placed his interests above any member of the putative
3 Class. This sort of payment to a Class representative has been a common feature of settlements
4 negotiated by Class Counsel and routinely approved by courts. In light of the foregoing, Class
5 Counsel believes that the \$5,000.00 incentive award to the Class Representative is fair and
6 reasonable.

7 //

8 **Proposed Class Notice Provides Adequate Notice**

9 65. The notification procedure set out in the Settlement Agreement provides the greatest
10 likelihood that each and every Class Member will receive the Class Notice, attached to the
11 Settlement as Exhibit 1. Under the Settlement, Defendant will deliver the Class Data to the
12 Settlement Administrator not later than thirty (30) calendar days after the Court grants Preliminary
13 Approval of the stipulated Settlement. (Exhibit 1, Settlement Agreement, ¶ 59.) The Settlement
14 Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, to all
15 Class Members no event later than 14 (fourteen) days after receiving the Class Data via USPS mail.
16 (Exhibit 1, Settlement Agreement, ¶ 77.2.)

17 66. Any Class Notices returned to the Settlement Administrator as non-delivered on or before
18 the Response Deadline must be re-mailed to the forwarding address affixed thereto. (Exhibit 1,
19 Settlement Agreement, ¶ 77.3.) If no forwarding address is provided, the Settlement Administrator
20 will promptly attempt to determine a correct address by lawful use of skip-tracing, or other search
21 using the identifying information provided by Defendant of the Class Member involved. The Class
22 Notice will be mailed to each Class Member whose Class Notice is returned to the Settlement
23 Administrator within (5) calendar days of the initial mailing of the Class Notices by the Settlement
24 Administrator, or other such notice as ordered by the Court. (*Id.*) This procedure for providing notice
25 is the best and most practicable way to ensure the greatest possible number of Class Members will
26 receive the Class Notice. (*Id.*)

27 67. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
28 claims involved, the terms of the settlement, and their options thereunder. (Exhibit 1, Settlement

1 Agreement, Exhibit 1, Class Notice.) The Class Notice provides each Class Member's period of
2 employment in a class position during the Class Period, the number of Workweeks calculated by
3 the Settlement Administrator, and the Settlement Administrator's calculation of each Class
4 Member's estimated Individual Class Payment and Individual PAGA Payment. (*Id.*) It provides
5 further for a specific procedure to seek exclusion from the Class Members, disputing payments and
6 Class Data, challenging the number of Workweeks and pay period data, and lodging objections to
7 the settlement. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.) In the Class Notice,
8 Class Members will also receive Class Counsel's contact information so they can speak to attorneys
9 conversant with the legal and factual issues involved in this case, as well as the contact information
10 for the Settlement Administrator. The efforts taken to ensure that Class Members receive the Class
11 Notice and are well informed about the settlement are reasonable and provide the best notice
12 practicable under the facts.

13 **Qualifications and Adequacy of Class Counsel**

14 68. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases,
15 including class actions and PAGA actions on behalf of employees and others who have had their
16 rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs'
17 counsel of record in numerous wage and hour and employment class action and PAGA action cases
18 pending in both state and federal court.

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

24 70. D.Law has litigated and successfully resolved many wage and hour class action cases
25 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa
26 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.
27 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in
28 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in

1 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,
2 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-
3 L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,
4 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632
5 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
6 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
7 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
8 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of
9 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et
10 al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time
11 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.
12 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis
13 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v.
14 Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3
15 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk
16 Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont
17 Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT
18 Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa
19 MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court
20 of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California,
21 Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church &
22 Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL
23 Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo
24 Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account
25 Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369),
26 Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421),
27 Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v.
28 Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha

1 Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-
2 CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of
3 California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court
4 of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern
5 District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al.
6 (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc.
7 (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc.
8 (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat
9 International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care
10 Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v.
11 OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743),
12 Viridi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS
13 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-
14 CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San
15 Diego, 37-2020-00008179-CU-OE-NC), among others.

16 71. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement
17 department. I was admitted to the California Bar in December 2008. I received my J.D. from
18 Pepperdine University School of Law and B.S. from the University of Southern California. Since
19 graduating from law school, I have dedicated virtually my entire career on the practice of
20 employment law. I have practiced employment law from the plaintiff's side, from the defense side,
21 and from an in-house position. I have significant experience specifically working on wage and hour
22 class actions from the plaintiff's side as well as the defense side, with the majority of my experience
23 coming from the plaintiff's side.

24 72. Attorney Alvin B. Lindsay is Senior Counsel at D.Law and counsel of record for Plaintiff.
25 He graduated from the United States Military Academy at West Point and then served as an Army
26 Officer for 10 years in the Corps of Engineers. He then earned his Juris Doctorate from Whittier
27 Law School and has been practicing in California for over twenty years. Since 2010, he has
28 exclusively focused his practice on representing employees including in wage-and-hour class

1 actions. During his career, he has represented employees in many wage-and-hour class action
2 lawsuits as lead or co-lead counsel (including in the Central, Southern, Eastern, and Northern
3 Districts of California), and has been successful in getting many contested class action cases
4 certified and has secured class and PAGA settlements for many millions of dollars against a range
5 of defendants, including Fortune 500 companies. He is experienced and qualified to evaluate the
6 class and representative claims, to evaluate settlement versus trial on a fully informed basis, and to
7 evaluate the viability of the defenses.

8 73. The collective experience of the D.Law attorneys in litigating employment wage and hour
9 matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a
10 case, and generally negotiating fair and reasonable class and representative action settlements.
11 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the
12 constantly evolving substantive law (state and federal), as well as the procedural law of class and
13 representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the
14 skills and knowledge developed over decades of prosecuting and defending wage and hour class
15 actions to fairly and adequately represent the interests of the Class Members and Aggrieved
16 Employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law
17 are well-qualified to act as class counsel and represent the Plaintiff and the putative Class Members
18 and Aggrieved Employees in this action.

19 74. We understand the responsibilities owed as counsel to the class members and aggrieved
20 employees we represent. The attorneys at D.Law thoroughly investigated the claims asserted in
21 this action and have remained committed to dedicating the resources necessary to represent the
22 Class Members and vigorously pursue their claims. Class Counsel has incurred substantial hours
23 in prosecuting this action on a contingency basis and will not receive any compensation for their
24 efforts until recovery is obtained for the Class. In addition, Class Counsel's efforts in reaching the
25 Settlement on behalf of the Class will confer a significant benefit to the Class. Based upon my
26 experience and understanding of the claims and defenses in this action, I believe the Settlement is
27 fair, adequate, and reasonable for the Settlement Class Members and Aggrieved Employees and all
28 involved, and that the Settlement is well within the range of reasonableness that would permit it to

1 be finally approved. I am not aware of any conflict of interest with Plaintiff or any other Class
2 Member that would interfere with the duties as Class Counsel.

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

5 Executed this 16th day of March, 2026, in Pasadena, California

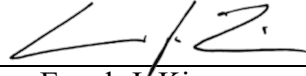
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EXHIBIT 1

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Attorneys for Defendants ACCEL FRAMING, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RICHARD A. AZHOCAR, an individual, on
behalf of himself and others similarly situated,

Plaintiff,

vs.

ACCEL FRAMING, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00053185-CU-OE-CTL

CLASS ACTION

Assigned for all purposes to:
Hon. Marcella O McLaughlin
Dept.: C-72

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT**

Original Complaint filed: December 06, 2023
First Amended Complaint: August 20, 2025
Trial: None set

1 This “Class Action and PAGA Settlement Agreement” (“Agreement”) is made by and
2 between plaintiff Richard A. Azhocar (“Plaintiff”) and ACCEL FRAMING, INC (“Defendants”).
3 The Agreement refers to Plaintiff and Defendants collectively as “the Parties,” or individually as
4 “Party.”

5 **A. DEFINITIONS.**

6 1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendants captioned *Richard A. Azhocar v. Accel Framing, Inc, et al.*, filed on December 6, 2023;
8 and First Amended Complaint adding PAGA Cause of Action filed on August 20, 2025, in San
9 Diego County Superior Court.

10 2. “Administrator” means Apex Class Action administrators (“Apex”), and Apex is the
11 neutral entity the Parties have agreed to appoint to administer the Settlement.

12 3. “Administration Costs” means the amount the Administrator will be paid from the
13 Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the
14 Administrator’s “not to exceed” bid the parties have received from Apex for \$12,500.00.

15 4. “Aggrieved Employee” means all Class Members who worked during the PAGA
16 Period (i.e. the period from December 6, 2022, through August 11, 2025).

17 5. “Class” means all non-exempt, hourly individuals that worked for Defendants in
18 California during the Settlement Class Period (i.e. the period from December 6, 2019, through
19 August 11, 2025.).

20 6. “Class Counsel” means Emil Davtyan, David Yeremian and Alvin B. Lindsay and the
21 other attorneys of D.Law, Inc.

22 7. “Class Counsel Fees Payment” means an award of attorneys’ fees granted to Class
23 Counsel and paid from the Gross Settlement Amount. The Parties have agreed Plaintiff will request
24 approval from the Court of up to one-third of the Gross Settlement Amount, i.e. up to \$80,000.00.

25 8. “Class Counsel Litigation Expenses Payment” means the amount ultimately allocated
26 from the Gross Settlement Amount to Class Counsel for reimbursement of reasonable expenses and
27 costs incurred in the Action, as presented to and approved by the Court in connection with final
28 approval. If certain of Class Counsel’s items invoiced and presented as Litigation Expenses are not

1 finally approved by the Court as requested, Class Counsel agrees to receive the remaining amount,
2 and the difference will remain in the Net Settlement Amount to be distributed to the Class Members.

3 9. "Class Data" means Class Member identifying information in Defendants' possession
4 including the Class Member's name, last-known mailing address, email address, telephone number,
5 Social Security number, hire dates, and termination dates.

6 10. "Class Member" means a member of the Class, as either a Participating Class Member
7 or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as
8 an Aggrieved Employee).

9 11. "Class Member Address Search" means the Administrator's investigation and search
10 for current Class Member mailing addresses using all reasonably available sources, methods, and
11 means including, but not limited to, the "National Change of Address Database", skip traces, and
12 direct contact by the Administrator with Class Members.

13 12. "Class Notice" means the Court approved notice of settlement and hearing date for
14 Final Approval, with a Spanish translation if the parties deem necessary, to be mailed to Class
15 Members and incorporated by reference into this Agreement.

16 13. "Class Period" means the period from December 6, 2019 through August 11, 2025.

17 14. "Class Representative" means the named Plaintiff Richard A. Azhocar, in the Action
18 seeking Court approval to serve as a Class Representative.

19 15. "Class Representative Enhancement Award" means the payment to the Class
20 Representative for initiating the Action and providing services in support of the Action, and
21 Defendants agree not to object to a requested Enhancement Award of up to \$5,000.00 subject to
22 Court approval.

23 16. "Court" means the Superior Court of California, County of San Diego.

24 17. "Defendants" mean named Defendants ACCEL FRAMING, INC

25 18. "Defense Counsel" means David Nusz of O'Hagan Meyer.

26 19. "Effective Date" means the date when the Court enters Judgment upon Final Approval
27 and the Judgment is final. The judgment is final when the Court's final Judgment is entered in
28 addition to the Court's Order granting final approval to the Settlement. If there is an objector and no

1 appeal, the Effective Date will be 60 days after entry of final judgment. If there is an appeal, the
2 Effective Date will be 60 days after it has been finalized. The Effective Date of Release for the Class
3 and PAGA Releases will be when the Gross Settlement Amount has been fully funded in the
4 Qualified Settlement Fund.

5 20. "Final Approval" means the Court's order granting final approval of the Settlement.

6 21. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval
7 of the Settlement.

8 22. "Gross Settlement Amount" means \$240,000.00 (Two Hundred Forty Thousand
9 Dollars with Zero Cents), which is the total amount Defendants agree to pay under the Settlement,
10 except as provided in Paragraph F below.

11 23. "Individual Class Payment" means the Participating Class Member's pro rata share of
12 the Net Settlement Amount calculated according to the number of Workweeks worked during the
13 Class Period.

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

17 25. "Judgment" means the judgment entered by the Court based upon the Final Approval.

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

20 27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
21 under Labor Code section 2699, subd. (i).

22 28. "Net Settlement Amount" means the Gross Settlement Amount, less the following
23 payments in the amounts approved by the Court: PAGA Penalties, Class Representative
24 Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
25 and the Administration Costs. The remainder is to be paid to Participating Class Members as
26 Individual Class Payments.

27 29. "Non-Participating Class Member" means any Class Member who opts out of the
28 Settlement by sending the Administrator a valid and timely Request for Exclusion.

1 30. “Operative Complaint” means the operative “First Amended Complaint” filed in the
2 Action on August 20, 2025.

3 31. “PAGA Pay Period” means any pay period during which an Aggrieved Employee
4 worked for Defendants for at least a portion of one day during the PAGA Period.

5 32. “PAGA Period” means the period from December 6, 2022 to August 11, 2025.

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

7 34. “PAGA Notice” means Plaintiff’s December 6, 2023 letter to LWDA (LWDA Case
8 No. LWDA-CM-998240-23) and the Defendants providing notice pursuant to Labor Code section
9 2699.3, subd.(a).

10 35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the
11 Gross Settlement Amount (\$16,000.00), allocated 25% to the Aggrieved Employees (\$4,000.00) and
12 75% to LWDA (\$12,000.00) in settlement of PAGA claims.

13 36. “Participating Class Member” means a Class Member who does not submit a valid and
14 timely Request for Exclusion from the Class portion of the Settlement.

15 37. “Plaintiff” means Richard A. Azhocar, the named plaintiff in the Action.

16 38. “Preliminary Approval” means the Court’s order granting preliminary approval of the
17 Settlement.

18 39. “Release Effective Date” means the date Plaintiff, Class Members, and Aggrieved
19 Employees effectively release all claims against the Released Parties. For the Participating Class
20 Members and Aggrieved Employees, the Release Effective Date occurs on the date after the Court
21 enters Judgment and Defendants have fully funded the Settlement Fund, or if there is an objector,
22 the date after any appeal period has passed, or if a timely appeal from the Judgment is filed, the day
23 after the appellate court affirms the Judgment and issues a remitter and also after Defendants have
24 fully funded the Gross Settlement Amount.

25 40. “Released Class Claims” means the class claims being released on the Release
26 Effective Date and as described in Paragraph 67 below.

27 41. “Released PAGA Claims” means the PAGA claims being released on the Release
28 Effective Date as described in Paragraph 68 below.

42. “Released Parties” means: Defendants and all of Defendants’ former and present officers, directors, subsidiaries, affiliates, shareholders, members, agents, attorneys, insurers, predecessors, successors, owners, and assigns.

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

44. “Response Deadline” means forty-five (45) days after the Administrator mails Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the Settlement, or (b) fax, email, or mail his or her objection to the Settlement. Class Members to whom Class Notice is resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond when the Response Deadline has expired to provide an appropriate response.

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

46. “Workweek” means any week during which a Class Member worked for Defendants for at least a portion of one day, during the Class Period.

B. RECITALS.

47. On December 6, 2023, Plaintiff commenced the Action by filing a complaint alleging causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime; (3) Meal Period Violations; (4) Rest Period Violations; (5) Violation of Labor Code §226; (6) Violation of Labor Code §221; (7) Violation of Labor Code §204; (8) Violation of Labor Code §203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse Necessary Business Expenses; and (12) Violation of Business & Professions Code §17200 *et seq.* On December 6, 2023, and pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave timely notice to the LWDA and Defendants that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-998240-23). On August 8, 2025, after the statutory period passed and this honorable court granted Leave to File. On August 20, 2025, Plaintiff filed his First Amended

Complaint (Operative Complaint), adding claims for penalties under PAGA, Labor Code §2698.

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

49. On June 10, 2025, the Parties participated in a mediation presided over by respected wage and hour mediator Kelly Knight and were able to reach an agreement on general settlement terms.

50. In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including speaking to current and former employees of Defendants regarding Defendants' employment policies and practices. Plaintiff's counsel provided Defendants' counsel with a comprehensive listing of informal discovery items required to constructively mediate. Defendants responded by producing a 20% sampling of timekeeping and corresponding payroll records from the 135 putative class members covering the period of December 6, 2019, to May 04, 2025. Prior to mediation, Plaintiff therefore obtained and analyzed the production of time and payroll data for Class Members and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of the claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*").

51. The Court has not granted class certification and the parties are stipulating to conditional class certification for Settlement purposes only.

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

C. MONETARY TERMS.

53. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants will pay \$240,000.00 (Two Hundred Forty Thousand Dollars with Zero Cents) to fully settle, resolve, and extinguish all claims asserted in the Action, including without limitation all

claims asserted in the PAGA Notice. The Gross Settlement Amount is non-reversionary and does not include employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which Defendants will pay separately.

54. Schedule for Payment of the Gross Settlement Amount: Within thirty (30) days of entry of the Court's Order granting Preliminary Approval of this Settlement Agreement, Defendant will make the first installment payment in the process of fully funding the Gross Settlement Amount. Installments in the amount of \$60,000.00 (Sixty Thousand Dollars) will be paid thirty (30) days after Preliminary Approval entry and then every six (6) months thereafter until the \$240,000.00 Gross Settlement Amount is fully funded. To facilitate this, the Administrator will set up a Qualified Settlement Fund at preliminary approval to receive the installment payments. The Effective Date of this settlement shall be the date on which the settlement is approved by the Court and the Court's Final Judgment ("Final Judgment" or "Judgment") is entered and the Gross Settlement Amount has been fully funded. If there is an objector, the Effective Date will be thirty (30) days after any appeal period has run or any appeal is completed and the Gross Settlement Amount is fully funded.

55. This is a non-reversionary Settlement in which Defendants are required to pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants. Defendants are separately and solely responsible for any employer payroll taxes owed as a result of this Settlement Agreement. Defendants will deposit money, in an amount equal to the Gross Settlement Amount, to pay (1) the Settlement Class per the terms of the final settlement agreement, and (2) court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Costs, and Class Representative Enhancement Award, and (3) PAGA penalties to be paid to the LWDA and to the Aggrieved Employees into a Qualified Settlement Fund established by the Settlement Administrator.

56. Cure Period, Interest Clause: If Defendants fail to make any payment of the Gross Settlement Amount by the deadlines set forth in Paragraph 54 and pursuant to the Administrator's payment timeline, and such failure continues for more than thirty (30) days after written notice from the Administrator of such failure, then the unpaid portion of the Gross Settlement Amount due will incur interest at the statutory rate for a judgment for wage under California law. Any such interest

1 accrued will be distributed pro rata to the Participating Class Members or otherwise as the Court
2 directs. Defendants shall have no power over transferred funds, or to alter the schedule set forth in
3 Paragraph 54 of this Agreement, absent court order. Any dispute between the Parties as to the
4 meaning and/or application of Paragraph 54 will be submitted to the Court. No interest will accrue
5 during the time that any Paragraph 54 issue is submitted to and is before the Court.

6 57. Payments from the Gross Settlement Amount. Subject to the terms and conditions of
7 this Agreement, the Administrator will make and deduct the following payments from the Gross
8 Settlement Amount in the amounts specified by the Court in the Final Approval:

9 57.1 To Plaintiff: A payment for the Class Representative Enhancement Award to the Class
10 Representative, Richard A. Azhocar, of not more than \$5,000.00 (Five Thousand Dollars) in addition
11 to any Individual Class Payment and any Individual PAGA Payment the Class Representative is
12 entitled to receive as a Participating Class Member. Additionally, this payment is separate and apart
13 from the separate individual settlement Plaintiff reached with Defendants in the separate Individual
14 Action. Defendants will not oppose Plaintiff's request for a Class Representative Enhancement
15 Award that does not exceed the \$5,000.00 amount. As part of the motion for the Class Counsel Fees
16 Payment and Class Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any
17 Class Representative Enhancement Award. If the Court approves a Class Representative
18 Enhancement Award less than the amount requested, the Administrator will retain the remainder in
19 the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will
20 pay the Class Representative Enhancement Award using IRS Form 1099. Plaintiff assumes full
21 responsibility and liability for employee taxes owed on the Class Representative Enhancement
22 Award.

23 57.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the
24 Gross Settlement Amount, that is up to \$80,000.00, and a Class Counsel Litigation Expenses
25 Payment for reimbursement of reasonable expenses and costs incurred in the Action. Defendants
26 will not oppose requests for these payments. Plaintiff and/or Class Counsel will file a motion
27 requesting Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later
28 than 16 (sixteen) court days prior to the Final Approval Hearing, or as otherwise ordered by the

1 Court. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
2 Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to
3 the Net Settlement Amount for distribution to Participating Class Members. Released Parties shall
4 have no liability to Class Counsel or any other Plaintiff's counsel arising from any claim to any
5 portion of Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The
6 Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses
7 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability
8 for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
9 Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or
10 controversy regarding any division or sharing of any of these payments.

11 57.3 To the Administrator: An Administration Costs payment not to exceed \$12,500.00
12 except for a showing of good cause and as approved by the Court. To the extent the Administration
13 Costs are less or the Court approves payment of less than \$12,500.00, the Administrator will retain
14 the remainder in the Net Settlement Amount to be distributed to Participating Class Members.

15 57.4 To Each Participating Class Member: An Individual Class Payment is calculated by
16 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
17 Participating Class Members during the Class Period, and (b) multiplying the result by each
18 individual Participating Class Member's Workweeks.

19 57.4(a) Tax Allocation of Individual Class Payments. 20% of each Participating Class
20 Member's Individual Class Payment will be allocated to wage claims (the "Wage Portion"). The
21 Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each
22 Participating Class Member's Individual Class Payment will be allocated to interest and penalties
23 (the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage withholdings and will be
24 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
25 for any employee taxes owed on their Individual Class Payment.

26 57.4(b) Effect of Non-Participating Class Members on Calculation of Individual Class
27 Payments. Non-Participating Class Members will not receive any Individual Class Payments. The
28 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement

Amount for distribution to Participating Class Members on a pro-rata basis.

57.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$16,000.00 (Sixteen Thousand Dollars) will be paid from the Gross Settlement Amount, with 75% (\$12,000.00) allocated to the LWDA PAGA Payment and 25% (\$4,000.00) allocated to the Individual PAGA Payments. Aggrieved Employees cannot request exclusion.

57.5(a) The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$4,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

57.5(b) If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

D. SETTLEMENT FUNDING AND PAYMENTS.

58. Class Workweeks and Aggrieved Employee PAGA Pay Periods. Based on data gathered in advance of mediation, it is estimated there were 675 Class Members who collectively worked a total of **25,000** Workweeks from December 6, 2019 through August 11, 2025, and 450 Aggrieved Employees who worked a total of 12,000 PAGA Pay Periods from December 6, 2022 to August 11, 2025.

59. Class Data. Not later than thirty (30) days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member

1 identifying information and to provide corrected or updated Class Data as soon as reasonably
2 feasible. Without any extension of the deadline by which Defendants must send the Class Data to
3 the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
4 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

5 60. Payments from the Gross Settlement Amount. The monies to be distributed to
6 Participating Class Members (i.e. the Net Settlement Amount) and Aggrieved Employees shall be
7 paid to them by the Administrator within 10 (ten) days following the receipt of the Gross Settlement
8 Amount by the Settlement Administrator from Defendants.

9 61. The Administrator will issue checks for the Individual Class Payments and/or
10 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The face
11 of each check shall prominently state the date (180 days after the date of mailing) when the check
12 will be voided (“Void Date”). The Administrator will cancel all checks not cashed by the Void Date.
13 The Administrator will send checks for Individual Settlement Payments to all Participating Class
14 Members (including those for whom the Class Notice was returned undelivered). The Administrator
15 will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-
16 Participating Class Members who qualify as Aggrieved Employees (including those for whom Class
17 Notice was returned undelivered). Before mailing any checks, the Administrator must update the
18 recipients’ mailing addresses using the National Change of Address Database.

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

27 63. For any Class Member whose Individual Class Payment check or Individual PAGA
28 Payment check is uncashed and canceled after the Void Date, the Administrator shall transmit the

1 funds represented by such checks to the California State Controller's Unclaimed Property Fund in
2 the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
3 California Code of Civil Procedure Section 384, subd. (b).

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

7 **E. RELEASES OF CLAIMS.** On the Release Effective Date, Plaintiff, Class Members,
8 Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

9 65. Plaintiff's Release. Plaintiff and his respective former and present spouses,
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, releases
11 and discharges Released Parties from all claims, transactions, or occurrences, that occurred during
12 the Class Period, including all claims that were, or reasonably could have been, alleged, based on
13 the facts contained in the Operative Complaint and Plaintiff's PAGA Notice ("Plaintiff's Release").
14 Plaintiff's Release also does not extend to any claims or actions to enforce this Agreement, or to any
15 claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
16 workers' compensation benefits that arose at any time, or based on occurrences outside the Class
17 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition
18 to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
19 Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or
20 additional facts or Plaintiff's discovery of them.

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

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

28 ///

1 67. Release by Participating Class Members: All Participating Class Members, on behalf
2 of themselves and their respective former and present representatives, agents, attorneys, heirs,
3 administrators, successors, and assigns, release the Released Parties from those claims arising out of
4 or related to the allegations set forth in the Operative Complaint that arose during the Class Period,
5 including all statutes on which those claims are based in the Operative Complaint, including claims
6 for: failure to pay for all hours worked/compensation due for services, wages, minimum wages,
7 overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide
8 payment of wages during employment and payment of wages at termination; failure to maintain and
9 provide accurate and complete records; failure to reimburse for necessary business expenses; failure
10 to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or
11 compensation related to any or all of the foregoing, which are based on the facts alleged in the
12 Action; restitution related to any or all of the foregoing, which are based on the facts alleged in the
13 Action; and any penalties, including statutory or civil penalties, related to any or all of the foregoing.
14 This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203,
15 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et. seq.*, 248.1, 248.2, 248.5, 432.5,
16 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5,
17 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code
18 § 17200 *et seq.*; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare
19 Commission Wage Orders MW-2014 (collectively, the “Released Class Claims”). The Released
20 Class Claims apply to claims arising during the Class Period. Except as set forth in Paragraph 67 of
21 this Agreement, Participating Class Members do not release any other claims, including claims for
22 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
23 unemployment insurance, disability, social security, workers’ compensation, or claims based on
24 facts occurring outside the Class Period.

25 68. Release by Aggrieved Employees: All Aggrieved Employees, including Non-
26 Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of
27 themselves and their respective former and present representatives, agents, attorneys, heirs,
28 administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties

1 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
2 Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA Penalties
3 claims premised on: California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3,
4 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2,
5 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, *et seq.*; failure to pay for all hours
6 worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal
7 periods, rest periods, pay reporting time pay; failure to provide payment of wages during
8 employment and payment of wages at termination; failure to maintain and provide accurate and
9 complete records; failure to reimburse for necessary business expenses; failure to provide sick pay,
10 COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related
11 to any or all of the foregoing, which are based on the facts alleged in the Action (“Released PAGA
12 Claims”). The Released PAGA Claims apply to claims arising during the PAGA Period.

13 69. Release Effective Date: As of the Release Effective Date, as defined above, all
14 Participating Class Members shall be enjoined from filing, joining or becoming a party, member or
15 representative in any actions, claims, complaints, or proceedings in any state or federal court on an
16 individual, representative, collective or class action basis, or from initiating any other proceedings
17 regarding any of the Released Class Claims identified herein. In addition, upon the Release Effective
18 Date, all eligible Aggrieved Employees shall be enjoined from filing, joining, or becoming a party,
19 member or representative in any actions, claims, complaints, or proceedings in any state or federal
20 court on an individual, representative, collective or class action basis, or from initiating any other
21 proceedings to the extent such actions, claims, complaints, or proceedings are based on the Released
22 PAGA Claims released through this Settlement

23 **F. MOTION FOR PRELIMINARY APPROVAL**. Plaintiff will prepare and file a
24 motion for preliminary approval (“Motion for Preliminary Approval”) within thirty (30) days of the
25 full execution of this Class Action and PAGA Settlement Agreement.

26 70. Defendants’ Statement of Non-Opposition in Support of Preliminary Approval.
27 Defendants may file a statement of non-opposition in support of preliminary approval to be filed
28 with or after the Motion for Preliminary Approval documents.

1 71. Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining
2 Preliminary Approval, including: (i) a draft of the notice, memorandum in support, Motion for
3 Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request
4 for approval of the PAGA portion of the Settlement under Labor Code Section 2699, subd. (f)(2));
5 (ii) a draft proposed Preliminary Approval order; (iii) a draft proposed Class Notice, (iv) a signed
6 declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement
7 and attesting to its willingness to serve; competency; operative procedures for protecting the security
8 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
9 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
10 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
11 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and
12 disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or
13 the Administrator; (vi) a signed declaration from Class Counsel firm attesting to its competency to
14 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
15 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint
16 (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2));
17 and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and/or
18 the Administrator. In their declarations, Plaintiff and Class Counsel shall aver that they are not aware
19 of any other pending matter or action asserting claims that will be extinguished or adversely affected
20 by the Settlement.

21 72. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
22 responsible for expeditiously finalizing the Motion for Preliminary Approval. Class Counsel will
23 complete and file the Motion for Preliminary Approval within thirty (30) days, obtain the earliest
24 possible hearing date for the Motion for Preliminary Approval, file the Motion for Preliminary
25 Approval no later than 16 (sixteen) court days before the hearing, unless otherwise ordered by the
26 Court, and deliver the Court's Preliminary Approval to the Administrator.

27 73. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
28 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense

1 Counsel will expeditiously work together on behalf of the Parties by meeting in person or by
2 telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
3 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
4 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
5 in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the
6 Court's concerns.

7 **G. SETTLEMENT ADMINISTRATION.**

8 74. Selection of Administrator. The Parties have jointly selected Apex to serve as the
9 Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound
10 by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
11 for payment of Administration Costs. The Parties and their Counsel represent that they have no
12 interest or relationship, financial or otherwise, with the Administrator other than a professional
13 relationship arising out of prior experiences administering settlements.

14 75. Employer Identification Number. The Administrator shall have and use its own
15 employer identification number for purposes of calculating payroll tax withholdings and providing
16 reports to state and federal tax authorities.

17 76. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
18 meets the requirements of a "Qualified Settlement Fund" ("QSF") under US Treasury Regulation
19 section 468B-1 for the funding of the Gross Settlement Amount. Any interest that accrues on the
20 Gross Settlement Amount sums paid into the QSF prior to distribution by the Administrator will
21 become part of the Net Settlement Amount for distribution to Participating Class Members. The QSF
22 will be fully funded in one payment as addressed above.

23 77. Notice to Class Members.

24 77.1 No later than five (5) calendar days after receipt of the Class Data, the Administrator
25 shall notify Class Counsel that the list has been received and state the number of Class Members,
26 Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

27 77.2 Using best efforts to perform as soon as possible, and in no event later than 14
28 (fourteen) days after receiving the Class Data, the Administrator will send to all Class Members

1 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
2 Notice with Spanish translation if the parties deem necessary substantially in the form attached to
3 this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar
4 amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class
5 Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts.
6 Before mailing Class Notice, the Administrator shall update Class Member addresses using the
7 National Change of Address Database.

8 77.3 Not later than five (5) calendar days after the Administrator’s receipt of any Class
9 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
10 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
11 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
12 the most current address obtained. The Administrator has no obligation to make further attempts to
13 locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second
14 time.

15 77.4 The deadlines for Class Members’ written objections, challenges to Workweeks and/or
16 PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen days (14)
17 days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members
18 whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
19 with the re-mailed Class Notice.

20 77.5 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise
21 discovers any persons who believe they should have been included in the Class Data and should
22 have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone,
23 and in good faith in an effort to agree on whether to include them as Class Members. If the Parties
24 agree, such persons will be Class Members entitled to the same rights as other Class Members, and
25 the Administrator will send, via email or overnight delivery, a Class Notice requiring them to
26 exercise options under this Agreement not later than 14 (fourteen) days after receipt of Class Notice,
27 or the deadline dates in the Class Notice, whichever are later.

28 ///

1 78. Requests for Exclusion (Opt-Outs).

2 78.1 Class Members who wish to exclude themselves (opt-out of) the Class portion of the
3 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
4 Exclusion not later than 45 (forty-five) days after the Administrator mails the Class Notice (plus an
5 additional 14 (fourteen) days for Class Members whose Class Notice is re-mailed). A Request for
6 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
7 the Class Member's election to be excluded from the Class portion of the Settlement and includes
8 the Class Member's name, address and email address or telephone number. To be valid, a Request
9 for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

10 78.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to
11 contain all the information specified in the Class Notice, so long as the Request for Exclusion is
12 received within the time periods described in Paragraph 77.1. The Administrator shall accept any
13 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person
14 as a Class Member and the Class Member's desire to be excluded. The Administrator's
15 determination shall be final and not appealable or otherwise susceptible to challenge. If the
16 Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator
17 may demand additional proof of the Class Member's identity. The Administrator's determination of
18 authenticity shall be final and not appealable or otherwise susceptible to challenge.

19 78.3 Every Class Member who does not submit a timely and valid Request for Exclusion is
20 deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound
21 by all terms and conditions of the Settlement, including the Participating Class Members' releases
22 under Paragraphs 66 and 67 of this Agreement, regardless of whether the Participating Class
23 Member actually receives the Class Notice or objects to the Settlement.

24 78.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
25 Participating Class Member and shall not receive an Individual Class Payment or have the right to
26 object to the class action components of the Settlement. Because future PAGA claims are subject to
27 claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved
28 Employees are deemed to release the Released PAGA Claims identified in Paragraph 67 of this

Agreement and are eligible for an Individual PAGA Payment.

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

80. Objections to Settlement.

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

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

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

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

3 81.1 Website, Email Address and Toll-Free Number. The Administrator will establish,
4 maintain and use an internet website to post information of interest to Class Members including the
5 date, time, and location for the Final Approval Hearing and copies of the Agreement, Motion for
6 Preliminary Approval, Preliminary Approval, Class Notice, Motion for Final Approval, motion for
7 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative
8 Enhancement Award, the Final Approval, and the Judgment. The Administrator will also maintain
9 and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes
10 and emails.

11 81.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
12 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than
13 five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the
14 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and
15 other identifying information of Class Members who have timely submitted valid Requests for
16 Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members
17 who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion
18 submitted (whether valid or invalid).

19 81.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports
20 to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices
21 mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or
22 invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received
23 and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments
24 (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity
25 of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

26 81.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority
27 to address and make final decisions consistent with the terms of this Agreement on all Class Member
28 challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s

1 decision shall be final and not appealable or otherwise susceptible to challenge.

2 81.5 Administrator's Declaration. Not later than 14 (fourteen) days before the date by which
3 Plaintiff is required to file the Motion for Final Approval, the Administrator will provide to Class
4 Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due
5 diligence and compliance with all of its obligations under this Agreement, including, but not limited
6 to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class
7 Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received
8 (both valid or invalid), the number of written objections and attach the Exclusion List. The
9 Administrator will supplement its declaration as needed or requested by the Parties and/or the Court.
10 Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

11 81.6 Final Report by Settlement Administrator. Within 10 (ten) days after the Administrator
12 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
13 and Defense Counsel with a final report detailing its disbursements by employee identification
14 number only of all payments made under this Agreement. At least 15 (fifteen) days before any
15 deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
16 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments
17 required under this Agreement. Class Counsel is responsible for filing the Administrator's
18 declaration in Court.

19 **F. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on data gathered
20 through the June 10, 2025, mediation, it is estimated that there are 675 Class Members who
21 collectively worked a total of **25,000** Workweeks from December 6, 2019 through August 11, 2025.
22 If it is determined that the total number of Workweeks is greater than **27,500** as of Preliminary
23 Approval (i.e. a 10% increase or more than 25,000 workweeks), the Gross Settlement Amount will
24 be increased by the same number of percentage points above 10% by which the actual number of
25 Workweeks exceeds 27,500. Alternatively, Defendants may elect to shorten the Class Period to stay
26 within the ten percent cushion, i.e., 27,500 Workweeks. If this provision is triggered so as to increase
27 the Gross Settlement Amount, the Parties agree that the portion of the Gross Settlement Amount
28 allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees

remains one third of the Gross Settlement Amount after the upward adjustment required by this provision is implemented.

G. DEFENDANTS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class Members, Defendants may, but are not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be *void ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Administration Costs incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than twenty (20) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

H. MOTION FOR FINAL APPROVAL. Not later than 16 (sixteen) court days before the calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA portion of the settlement under Labor Code section 2699, subd. (l); a proposed Final Approval; and a proposed Judgment (collectively "Motion for Final Approval").

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

83. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

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

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

25 **I. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
26 Procedure §384, the Parties will work together in good faith to jointly submit a proposed amended
27 judgment.

28 ///

1 **J. ADDITIONAL PROVISIONS.**

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

16 88. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants,
17 and Defense Counsel separately agree that, until the Motion for Preliminary Approval is filed, they
18 and each of them will not disclose, disseminate and/or publicize, or cause or permit another person
19 to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly,
20 specifically or generally, to any person, corporation, association, government agency, or other entity
21 except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep
22 this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report
23 income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in
24 response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees
25 to immediately notify the other Party of any judicial or agency order, inquiry, or subpoena seeking
26 such information. Plaintiff, Class Counsel, Defendants, and Defense Counsel separately agree not
27 to, directly or indirectly, initiate any conversation or other communication, before the filing of the
28 Motion for Preliminary Approval, with any third party regarding this Agreement or the matters

1 giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that
2 effect. This paragraph does not restrict Class Counsel’s communications with Class Members in
3 accordance with Class Counsel’s ethical obligations owed to Class Members.

4 89. Further Confidentiality. Plaintiff and Class Counsel will not issue press releases,
5 reference the Action by party name, communicate with, or respond to any media or publication
6 entities, publish information in manner or form, whether printed or electronic, on any medium or
7 otherwise communicate, whether by print, video, recording, or any other medium, with any person
8 or entity concerning the Settlement, its terms or contents, and the negotiations underlying the
9 Settlement, except as shall be contractually required to effectuate the terms of the Settlement as set
10 forth herein.

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

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

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

25 93. Cooperation. The Parties and their counsel will cooperate with each other and use their
26 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
27 Agreement, submitting supplemental evidence and supplementing points and authorities as
28 requested by the Court. In the event the Parties are unable to agree upon the form or content of any

document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of mediator Steven Rottman for resolution.

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

95. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants 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.

96. 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.

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

98. 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.

99. 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.

100. 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.

101. 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.

102. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall

1 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
2 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

7 To Plaintiff:

8 **D.LAW, INC.**
9 David Yeremian
10 d.yeremian@d.law
11 Alvin B. Lindsay
12 a.lindsay@d.law
13 William Tran
14 w.tran@d.law
15 450 N. Brand Blvd., Suite 840
16 Glendale, CA 91203
17 Telephone: (818) 962-6465
18 Facsimile: (818) 962-6469

14 To Defendants:

15 **O'HAGAN MEYER**
16 David Nusz (SBN 156298)
17 dnusz@ohaganmeyer.com
18 4695 MacArthur Court, Suite 900
19 Newport Beach, CA 92660
20 Telephone: (949) 942-8500
21 Facsimile: (949) 942-8510

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

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

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

11 107. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
12 the Parties request that the Court first attempt to construe the provisions valid to the fullest extent
13 possible consistent with applicable precedents, so as to define all provisions of this Agreement valid
14 and enforceable.

15 108. Severability. In the event that one or more of the provisions contained in this
16 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
17 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense
18 Counsel and Class Counsel, on behalf of the Parties, the Class Members, and the Aggrieved
19 Employees, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision
20 had never been included in this Agreement.

21 ///

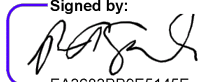
22 ///

23 ///

IT IS SO AGREED.

By the Parties:

DATED: 8/27/2025

Signed by:

EA3683BB9E5145E...

Plaintiff Richard A. Azhocar

DATED: _____

Defendant, ACCEL FRAMING, INC.

By: _____

Position: _____

Approved by Counsel:

DATED: August 27, 2025

D.LAW, INC.

By:  _____

David Yeremian

Alvin Lindsay

William Tran

Counsel for Plaintiff Richard A. Azhocar

DATED: _____, 2025

O'HAGAN MEYER

By: _____

David Nusz

Attorneys for Defendants, ACCEL FRAMING, INC

1 **IT IS SO AGREED.**

2 By the Parties:

3
4 DATED: _____

Plaintiff Richard A. Azhocar

5
6
7 DATED: 09/02/2025

Ryan Holmes

Defendant, ACCEL FRAMING, INC.

By: Ryan Holmes

Position: President

8
9
10
11
12 Approved by Counsel:

13
14 DATED: _____, 2025

D.LAW, INC.

By: _____

David Yeremian

Alvin Lindsay

William Tran

Counsel for Plaintiff Richard A. Azhocar

15
16
17
18
19 DATED: 09/02/2025, 2025

O'HAGAN MEYER

By: _____

David Nusz

David Nusz

Attorneys for Defendants, ACCEL FRAMING, INC

EXHIBIT A

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT (“Notice”)

Azhocar v. Accel Framing, Inc., et al.
San Diego County Superior Court Case No. 37-2023-00053185-CU-OE-CTL (“Court”)

A court has authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
Your legal rights are affected whether you act or do not act.

To: All persons employed by Defendant Accel Framing, Inc. (“Defendants” or “Accel Framing”) in California as non-exempt hourly employees who worked for Defendant during the Class Period, which is December 6, 2019 through August 11, 2025 (the “Class”).

YOU MAY BE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS ACTION AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive a Settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, after the Court grants final approval of the Settlement. <i>You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check.</i>
CHANGE CONTACT AND ADDRESS INFORMATION	Update your address with the Settlement Administrator to ensure your check is sent to the correct address.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do not want to participate in the Class portion of the Settlement, you may exclude yourself (opt out) from the Class portion of the Settlement. If you exclude yourself from the Class portion of the Settlement, you will not receive an Individual Class Payment (defined below). This is the only option that allows you to pursue your own Class claims (in your own lawsuit) against Defendant about the legal claims in the Lawsuit. However, even if you exclude yourself from the Class portion of the Settlement, you will still receive your Individual PAGA Payment from the PAGA portion of the Settlement if eligible and be bound by it as further explained below.
OBJECT	Write to the Court if you think the Settlement is not fair or you can appear at a hearing to explain to the Court why you think the Settlement is not fair.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **INNOVATIVE CONSTRUCTION SOLUTIONS WILL NOT RETALIATE IN ANY MANNER AGAINST ANYONE FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

BACKGROUND ON THE LAWSUIT

1. **Why did I get this notice?**

You received this notice because Accel Framing's records identify you as someone who worked for Accel Framing, Inc. in California as a non-exempt hourly employee at any time from December 6, 2019 through August 11, 2025, making you a "Class Member" during the "Class Period." The Settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys General Act ("PAGA"). If you are a Class Member, you are also an "Aggrieved Employee" if you worked for Defendant in California as a non-exempt hourly employee at any time from December 6, 2022 through August 11, 2025 ("PAGA Period").

The purpose of this notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court has already preliminarily approved the proposed Settlement and directed that you receive this notice. The Court will hold a final approval hearing (details provided below) to determine whether to finally approve the Settlement.

2. **What is this Class and PAGA Lawsuit about?**

Plaintiff, Richard A. Azhocar ("Plaintiff" or "Class Representative") initiated this wage and hour class and representative action against Defendant on December 06, 2023. Also, on December 06, 2023, Plaintiff sent a letter to the LWDA and Defendant advising of his PAGA claims ("PAGA Notice"). The First Amended Complaint filed on August 20, 2025 ("Operative Complaint") alleges claims against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime; (3) Meal Period Violations; (4) Rest Period Violations; (5) Violation of Labor Code §226; (6) Violation of Labor Code §221; (7) Violation of Labor Code §204; (8) Violation of Labor Code §203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse Necessary Business Expenses; and (12) Violation of Business & Professions Code §17200 *et seq*; and (13) Penalties under PAGA, Labor Code § 2698 (the "Lawsuit"). Plaintiff's class action and representative claims are on behalf of all current and former non-exempt hourly employees who worked for Defendant in California during the Class Period. Collectively, Plaintiff and Defendant are referred to as the "Parties."

Defendant denies all allegations in the Lawsuit and contends that it has fully complied with the California Labor Code. The Settlement is not an admission of any wrongdoing by Defendant or an indication that any law was violated or that this case was suitable for class or representative treatment.

On June 10, 2025, through arms-length negotiations with an experienced wage and hour mediator, Kelly Knight, the Parties settled the Lawsuit ("Settlement") subject to Court approval. The Settlement is memorialized in a "Class Action and PAGA Settlement Agreement" ("Agreement").

3. **Why is there a Settlement?**

The Court has not decided in favor of Plaintiff or Defendant or made any decision as to whether this case could proceed on a class or representative basis. Instead, with the assistance of an experienced and neutral mediator, the parties successfully negotiated the Settlement to resolve the Lawsuit rather than continue the expensive and time-consuming process of litigation.

Plaintiff and his attorneys strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) the Settlement is in the best interests of the Class Members and Aggrieved Employees.

4. Who are the Attorneys for the Parties?

Counsel for Plaintiff and the Class (“Class Counsel”)

David Yeremian, Esq.
Alvin Lindsay, Esq.
William Tran, Esq.
D.LAW, INC.
450 North Brand, Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Counsel for Defendant

David Nusz, Esq.
O’HAGAN MEYER
4695 MacArthur Court, Suite 900
Newport Beach, CA 92660
Telephone: (949) 942-8500
Facsimile: (949) 942-8510

THE TERMS OF THE SETTLEMENT

5. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of \$240,000.00 (the “Gross Settlement Amount”). From the Gross Settlement Amount, Class Counsel will apply to the Court for attorneys’ fees of \$80,000.00 and reimbursement of reasonable expenses and costs incurred in the Action; a payment of up to \$5,000.00 to the named Plaintiff for his time and effort to initiate and prosecute the Lawsuit (“Class Representative Service Payment”); \$12,000.00 to the California Labor Workforce Development Agency (“LWDA”) out of \$16,000.00 allocated to PAGA penalties (“PAGA Penalties”); \$4,000.00 in Individual PAGA Payments to the Aggrieved Employees based on the number of pay periods worked during the PAGA Period (“PAGA Pay Periods”; and payment not to exceed \$12,500.00 to Apex Class Action (“Settlement Administrator”) for settlement administration expenses (“Administration Costs”). The exact amount of the attorneys’ fees, litigation costs, Class Representative Service Payments, and Administration Costs will be determined by the Court at the Final Approval Hearing. The remaining portion of the Gross Settlement Amount (“Net Settlement Amount”) is currently estimated to be approximately **\$XXX,000.00**. The Net Settlement Amount will be apportioned and paid out to Class Members who do not opt out from the Settlement (“Settlement Class Members”) as individual payments based on the number of Workweeks worked during the Class Period (“Individual Class Payments”).

Defendants shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) days after the Court grants final approval of the Settlement and enters judgment, or the date any appeal period runs if there is an objector, or if a timely appeal from the judgment is filed, the day after the appellate court affirms the judgment and issues a remittitur. Distribution of the Individual Class Payments to the Settlement Class Members and Individual PAGA Payments to the Aggrieved Employees shall be paid to them by the Administrator within 10 (ten) days following the receipt of the Gross Settlement Amount by the Settlement Administrator from Defendants.

6. How will the Individual Settlement Payments to Settlement Class Members be calculated?

Settlement Class Members will receive Individual Class Payments as a proportional amount of the Net Settlement Amount. **A claim form is not required.** Class Members who opt out of the class portion of the Settlement will not receive an Individual Class Payment and will not be bound by the class portion of the Settlement.

Each Settlement Class Member's Individual Class Payment will be a pro-rata share of the Net Settlement Amount based on the number of workweeks worked during the Class Period ("Workweeks"). The Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the pro-rata share of the Net Settlement Amount that each Settlement Class Member would be entitled to.

All Individual Class Payments to Settlement Class Members shall be allocated as follows for tax purposes: 10% of each Participating Class Member's Individual Class Payment will be allocated to wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. 45% of each Participating Class Member's Individual Class Payment will be allocated to interest and the remaining 45% allocated to penalties (the "Non-Wage Portion"). The Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Your total estimated Workweeks is [REDACTED]. Based on that, your anticipated approximate Individual Class Payment is [REDACTED].

7. How will the PAGA Penalties be allocated to the LWDA and Aggrieved Employees?

The Parties will ask the Court to approve \$16,000.00 in PAGA Penalties for claims of civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties, or \$12,000.00, will be paid to the LWDA ("LWDA PAGA Payment"). The remaining 25% of the PAGA Penalties, or \$4,000.00, will be paid to Aggrieved Employees ("Individual PAGA Payment").

No claim form is required to receive an Individual PAGA Payment. Because Aggrieved Employees cannot opt out of the PAGA portion of the Settlement, Aggrieved Employees will receive an Individual PAGA Payment and be bound by the PAGA portion of the Settlement even if they opt out of the Class portion of the Settlement.

Each Aggrieved Employee's Individual PAGA Payment will be a pro-rata share of the 25% (\$4,000.00) of the PAGA Penalties to be distributed to Aggrieved Employees. Individual PAGA Payments will be based on the number of PAGA Pay Periods that each Aggrieved Employee worked for Defendant during the PAGA Period as a proportion of all PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099 will be issued, if required by law.

Your total estimated Pay Periods is [REDACTED]. Based on that, your anticipated Individual PAGA Payment is [REDACTED].

HOW TO GET A PAYMENT

8. How can I get a settlement payment?

If you do nothing, you will automatically receive your Individual Class Payment and Individual PAGA Payment (if any) after the Court's approval of the Settlement becomes final. You must notify the Settlement Administrator of any change in your name, mailing address, and/or telephone number if the information shown on this is not correct.

It is your responsibility to keep the Settlement Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Settlement Administrator has on file for you. You can contact the Settlement Administrator by U.S. Mail, email, or phone at [REDACTED] if you need to update contact information.

9. What do I do if I believe my Workweeks and/or PAGA Pay Periods are incorrect?

If you believe the Workweeks and/or PAGA Pay Periods above are not correct, you may send a letter to the Settlement Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before [REDACTED], 2025. [60 days within mailing of Notice] You should include any documents or other information which supports what you believe to be the number of Workweeks and/or PAGA Pay Periods you worked. The Settlement Administrator will resolve any dispute regarding these issues based on Defendant's records and any information you provide.

10. When can I expect to receive a settlement check?

Individual Class Payments and Individual PAGA Payments will be mailed to Settlement Class Members and Aggrieved Employees approximately 28 days after the Court's approval of the Settlement becomes final if the Settlement Administrator determines that the First Payment will fund the entirety of the Individual Class Payments and Individual PAGA Payments; otherwise, the Individual Class Payments and the Individual PAGA Payments, along with all the other payments from the Gross Settlement Amount, will be made following the Second Payment, which would occur approximately one year after the Court's final approval of the Settlement.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks that remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Settlement Class Member and/or Aggrieved Employee who did not cash his or her settlement check. If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately.

WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT

11. What am I giving up to get an Individual Settlement Payment?

If the Court approves this Settlement and unless you exclude yourself from the Class portion of the Settlement, you will become a Settlement Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the Class claims being resolved in this Settlement. Specifically, you will be giving up or "releasing" the claims described below:

Release by Settlement Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from those claims arising out of or related to the allegations set forth in the Operative Complaint that arose during the Class Period, including all statutes on which those claims are based in the Operative Complaint, including claims for: failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action; restitution related to any or all of the foregoing, which are based on the facts alleged in the Action; and any penalties, including statutory or civil penalties, related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 *et seq.*, 248.1, 248.2, 248.5, 432.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 *et seq.*; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 (collectively, the "Released Class Claims"). The Released Class Claims apply to claims arising during the Class Period. Except as set forth in Paragraph 67 of this Agreement,

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

12. What PAGA Claims are released by this Settlement?

Release by Aggrieved Employees: All Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including PAGA Penalties claims premised on: California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 227.3, 246, 248.1, 248.2, 248.5, 351, 354, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2810.5, 2698, and 2699, *et seq.*; failure to pay for all hours worked/compensation due for services, wages, minimum wages, overtime, premium payments, meal periods, rest periods, pay reporting time pay; failure to provide payment of wages during employment and payment of wages at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, COVID-19 sick pay, California sick pay, bonus pay, and any unpaid wages or compensation related to any or all of the foregoing, which are based on the facts alleged in the Action ("Released PAGA Claims"). The Released PAGA Claims apply to claims arising during the PAGA Period.

"Released Parties" means Defendant and all of Defendant's former and present officers, directors, subsidiaries, affiliates, shareholders, members, agents, attorneys, insurers, predecessors, successors, owners, and assigns.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

13. How do I opt out of the Class portion of the Settlement?

If you wish to pursue your own separate lawsuit against Defendant for the Class claims asserted in the Lawsuit, or if you otherwise wish not to participate in the Class portion of the Settlement for whatever reason, you should exclude yourself from this case (that is, opt out of the Class portion of the Settlement). However, you cannot opt out of the PAGA portion of the Settlement. Class Members who opt out of the Class portion of the Settlement will still be bound by the PAGA portion of the Settlement and will receive an Individual PAGA Payment.

To opt out of the Class portion of the Settlement and the release of Released Class Claims, you must provide a signed and dated letter to the Settlement Administrator requesting to be excluded. The letter must include the case name, case number, your full name, current address, and email address, and must be signed by you and faxed, emailed, or postmarked on or before [REDACTED], 2025. [60 days within mailing of Notice] Opt-out requests faxed, emailed, or postmarked after the deadline will be invalid.

Settlement Administrator: Apex Class Action

Email Address:

Mailing Address:

Telephone:

Fax Number:

14. If I don't exclude myself from the Class portion of the Settlement, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims being released by the Class portion of the Settlement, the Released Class Claims. If you have a claim or lawsuit already filed against

Defendant or any of the Released Parties, you should speak to your lawyer in that case immediately. You may need to exclude yourself from the Class portion of the Settlement to continue your own lawsuit. You cannot exclude yourself from the PAGA portion of the Settlement.

OBJECTING TO THE SETTLEMENT

15. **How do I tell the Court that I don't like the Settlement?**

If you are a Settlement Class Member and don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections must be faxed, emailed, or mailed to the Settlement Administrator by _____, 2025. [60 days within mailing of Notice]

The written objection should state your name and address and describe all legal and factual reasons for objecting to the terms of the Settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the Final Approval Hearing, the Settlement and Agreement will be approved and you will receive your Individual Class Payment. If you do not submit a written objection, you may still appear at the Final Approval Hearing to voice your objection or to otherwise observe the proceedings.

Class Members who opt out from the Class portion of the Settlement have no right to object to the Settlement.

THE COURT'S FINAL APPROVAL HEARING

16. **When and where will the Court decide whether to grant final approval of the Settlement?**

The Court will hold a "Final Approval Hearing" in Department C-72 of the San Diego County Superior Court Hall of Justice Courthouse located at 330 West Broadway, San Diego, CA 92101 on _____, 2025, at ____ p.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment, and the Administration Costs. The Court may reschedule the Final Approval Hearing without further notice to Class Members. You can also check the Orange County Superior Court website at <https://www.sdcourt.ca.gov/> for changes to the hearing schedule.

17. **Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it but you may. You may also hire and pay your own lawyer to attend if you so desire.

GETTING MORE INFORMATION

18. **Whom may I contact if I have questions about the Settlement?**

You may contact Class Counsel at the contact information listed above in Paragraph 4 if you have any questions about the Settlement. You may also contact the court-appointed Settlement Administrator, Apex Class Action, using its contact information provided above.

PLEASE DO NOT TELEPHONE THE SUPERIOR COURT CLERK TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

EXHIBIT 2

December 6, 2023

VIA ON-LINE SUBMISSION ONLY TO:

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

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

VIA CERTIFIED MAIL TO:

(by certified mail to Accel Framing, Inc.)

Accel Framing, Inc.
13025 Danielson Street, Suite 105,
Poway, CA 92064
Certified Mail Tracking Number: 9414 8112 0620 4404 4583 44

Ryan Thomas Holmes
Agent for Service of Process for Accel Framing, Inc.
25318 Bell Bluff Truck Trail,
Alpine, CA 91901
Certified Mail Tracking Number: 9414 8112 0620 4404 4602 17

**Re: Labor Code § 2698, *et seq.* Penalties - PAGA Notice Letter to LWDA
Richard A. Azhocar v. Accel Framing, Inc.
Superior Court for the County of San Diego**

Gentlepersons:

This office represents Plaintiff Richard A. Azhocar (“Plaintiff”) and other similarly aggrieved employees employed as non-exempt, hourly workers and in related positions at Defendants’ locations and client-designated jobsites in California during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2810.5, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants Accel Framing, Inc., and Does 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).



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

This correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff's Class Action Complaint, which is attached to this Notice letter. The Complaint is being concurrently filed in San Diego Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee within the State of California at Defendant Accel Framing, Inc. ("Accel"). Accel is a general contracting and framing service company that installs structures, fixtures, and elevations, and constructs building framing works, including walls, floors, and doors at customer-designated jobsites in California. Plaintiff and the other similarly situated Employees of Defendants worked in Defendants' locations and client-designated jobsites at Defendants' behest and without being paid all wages due and without being provided all their required meal periods and rest breaks.

Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as the other Aggrieved Employees who served in similar and related positions at the Accel locations and client-designated jobsites.

During the course of Plaintiff and the Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly employees as carpenters and in similar and related positions based out of their locations and client-designated jobsites in California.

Plaintiff was generally scheduled to work five days per week for eight to nine hours per shift, with shift times generally spanning from 7:00 a.m. through 3:30 p.m. On many occasions, Plaintiff was also required to work longer shifts with an additional hour or two of time approved by Defendants to be paid at overtime premium rates. However, Plaintiff was required by Defendants to endure substantial off the clock work before and after his scheduled shift hours.

Defendants' policy and practice of requiring systematic off the clock work flowed in part from their unlawful timekeeping procedures. Defendants did not have a timekeeping method of recording the actual time worked by Plaintiff and Aggrieved Employees. Nor did Defendants



require Plaintiff and Aggrieved Employees to maintain timekeeping entries. Managers required Plaintiff and Aggrieved Employees to sign in on a sheet after a required morning meeting. Plaintiff was instructed to only write his name and provide his signature on the sheet. He was not required to write down the time he began working. Instead, Defendants' managers and foremen, themselves, inputted Plaintiff's and Aggrieved Employees' shift start and end times into their timekeeping records at the end of the work week, and they relied on Plaintiff's scheduled shift time; not the actual time he began working.

Additionally, Defendants did not require Plaintiff and Aggrieved Employees to record or clock in and out for their meal periods. Typically, Plaintiff and Aggrieved Employees would continue working until managers announced that it was time for lunch. Defendants inputted into the timekeeping system that Plaintiff and Aggrieved Employees took a thirty minutes for a meal period and did so before the fifth hour of work as required under the Labor Code and Wage Orders without regard to whether they were actually taken on time or for the full duration or were interrupted demands from the manager or foremen and other work requirements. Additionally, by deducting 30 minutes for a meal period that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. Managers would again record that meal periods were timely or not shortened to avoid incurring and paying meal period premium penalty wages.

Defendants also required Plaintiff to be prepared to begin work at his scheduled shift start time, and he would be reprimanded if he was not. However, for Plaintiff to do so he had to arrive at the jobsite well before that start time. Plaintiff's work shifts were generally scheduled to start at 7:00 a.m., and to be prepared to start working then he had to arrive at the jobsite by at least 30 minutes prior to his scheduled shift time. Before signing in, Plaintiff was required to search for jobsite and unload his tools in the area that he was assigned to for the day. After unloading his tools, Plaintiff would hook up his electric tools to the electric bars on the jobsite. This typically took approximately 15-20 minutes, depending on the amount of tools he had to unload for the day and depending on whether other employees were unloading their trucks at the same time. On several occasions, Plaintiff had to wait in line until the trucks before him finished unloading before he could proceed with unloading his own tools. After Plaintiff finished unloading his tools, Plaintiff would drive off the jobsite and search for parking on the street. Plaintiff would park his truck, return to the jobsite, and then attend the morning start up meeting which generally commenced about 15 minutes prior to his shift start time. Plaintiff would be reprimanded by Defendant's managers if he did not arrive on time to the meeting despite the fact that Defendants timekeeping methods did not account for such off the clock work. When Plaintiff questioned this unlawful deduction of his hours worked, Defendants' manager told Plaintiff that he should not work with Defendants if he was going to complain about off the clock work and failure to pay overtime.

Plaintiff was also required to work off the clock after his scheduled shift end time. Plaintiff's scheduled shift end time was 3:30 p.m., and Plaintiff and Aggrieved Employees typically stopped working around 3:15 p.m. to begin packing their tools and equipment. However, Plaintiff rarely ever stopped working at his scheduled shift time. By the time Plaintiff finished



packing up, retrieving his truck, driving it to the job site, and loading all his tools and equipment onto his truck, it was well past 3:30 p.m. Although Plaintiff and Aggrieved Employees had approximately 15 minutes every shift to pack up, this process often times took up to 45 minutes, and Defendant's failed to compensate Plaintiff and Aggrieved Employees for this off the clock work. Defendants' managers also contacted Plaintiff by calling his personal cell phone regarding work related matters and scheduling and would do so both throughout the work day and during breaks and also after work hours. Additional off the clock work occurred in the form of the unlawful deduction of 30 minutes of hours worked for an alleged 30 minute long meal period that was provided generally untimely if at all. As mentioned above, Defendants relied on Plaintiff's scheduled shift time for timekeeping purposes and failed to implement a timekeeping system that contemporaneously records the actual time worked by Plaintiff and Aggrieved Employees, resulting in hours of off the clock work.

Overtime hours were generally not allowed, and if Plaintiff worked beyond his scheduled hours, Defendants' foremen and managers failed to account for such time in their time keeping records. The difficult to attain processing and production goals, compelled Plaintiff to work many hours off the clock and without compensation. When Plaintiff questioned Defendants' failure to pay overtime, Defendant's foreman told Plaintiff to "stop crying about 30 minutes of overtime." To whatever extent Defendants paid performance based bonuses and any other form of remuneration to Aggrieved Employees, such as shift differentials and the like, Defendants failed to include it in the regular rate used to calculate and pay the overtime that Defendants did pay.

Plaintiff was therefore not paid for all his hours worked at the required minimum, overtime wage rates due to Defendants' uniformly applied and unlawful policy and practice of requiring him to work off the clock and without pay. Defendants systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and timekeeping policies and endured similar violations at Defendants' hands as Plaintiff.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants required and the actual hours Plaintiff worked or the breaks he received or have otherwise declined to produce them to Plaintiff in response to a timely and lawful records request. By failing to pay for all hours worked, and by under-recording regular hours to the detriment of the Aggrieved Employees, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174, by either failing to maintain records or retaining inaccurate ones.

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the Aggrieved Employees working based out of Defendants' locations and client-designated jobsites throughout California. As a result of the above-described unlawful requirements to work off the



clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week.

Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wages for all time worked, as required by California law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a week and double-time rates for all hours worked in excess of twelve hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

Defendants also failed to provide Plaintiff and the Aggrieved Employees with their required meal periods and the at least two ten-minute rest breaks as required at a minimum for Plaintiff's scheduled shift durations. The above described off the clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s). Defendants similarly failed to authorize and permit Plaintiff and the employee Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

More specifically, Plaintiff worked shifts that entitled him to at least one meal period. Defendants' managers and foremen were in charge of recording meal periods for Plaintiff and Aggrieved Employees, and they always recorded 30 minutes for lunches and would deduct that time from hours worked for the shift. Plaintiff recalls that lunch periods were typically given around 12:00 p.m. or 1:00 p.m., depending on the foreman in charge of the jobsite for the day. However, to whatever extent there was ever a schedule for meal periods, it went by the wayside quickly as there always seemed to be a problem to resolve or a phone call to take or a message to respond to. Moreover, Defendant's foremen often forgot to release Plaintiff and Aggrieved Employees for their lunch period. This led to systematically late meal periods, if they were provided at all, and on-duty meal periods that were incessantly interrupted by foremen and management demands and required job duties and tasks to be performed and required Employees to remain under Defendants' control during breaks.

The difficult to attain production goals and management expectations also contributed to Employees working through meal periods, not taking them, or taking them late so work could be accomplished or they were required to remain under Defendants' control during meal periods. Plaintiff particularly recalls several occasions where he missed his meal because he was working indoors with loud machinery and could not hear the foreman's announcement for lunch. Defendant's foreman refused to let Plaintiff take a lunch break and failed to implement a new method of ensuring all employees hear the lunch time announcement. Moreover, Plaintiff's timecards fail to reflect any meal period premiums.



Additionally, Defendants foremen and managers inputted into their timekeeping system that Plaintiff and Aggrieved Employees took a full thirty minutes for a meal period and did so before the fifth hour of work as required under the Labor Code and Wage Orders. Defendants thus recorded compliant meal breaks without regard to whether they were actually taken on time or for the full duration or were interrupted by demands from the manager and foremen and other work requirements. Plaintiff recalls only a handful of times throughout his employment with Defendant where he was ever able to take an actual duty-free meal period, and despite this fact, Defendants automatically deducted 30 minutes for meal period on each work shift.

Therefore, meal period violations systematically occurred ongoing throughout all of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or penalty payment and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day. To the extent Defendants ever did pay Plaintiff a meal period premium, they failed to include all forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour premium payment. Upon information and belief, the other Aggrieved Employees were subjected to similar unlawful policies and practices and endured similar violations as Plaintiff.

Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five hours during a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that would impact when Employees were to receive meal periods and rest breaks and required them to respond to work calls and inquiries and other demands during breaks, thus leading to further violations.

Defendants' systems did not automatically generate a meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours into a work shift or in the event the time punch records reflected a meal period of less than thirty minutes. However, in the event Defendants did pay any meal period premiums, they did so at the employee's customary regular rate of hourly compensation without including all forms of remuneration in that hourly rate calculation, for example by omitting performance-based bonuses and the like from the rate at which meal premiums were paid.

Defendants thus followed uniformly applied policies of not providing all required meal periods to their Employees. Meal periods were often not properly provided, as work demands and computer and phone time impermissibly shortened their breaks. Even when Plaintiff and the Aggrieved Employees were able to take a meal period, it was generally interrupted by work duties or was taken after the fifth hour of work. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that would impact when Employees were to receive meal periods and rest breaks, thus leading to further violations.

As a result, Defendants' failure to provide Plaintiff and the Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is



and will be evidenced by Defendants' business records, or lack thereof. As further detailed above, Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's effective regular hourly rate of compensation for each meal period or rest break that Defendants failed to provide or deficiently provided.

Plaintiff and the Aggrieved Employees were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks as required under the Labor Code and Wage Orders due to Defendants' policies and practices. On the occasions when Plaintiff and the Aggrieved Employees were provided with a meal period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were not provided with one hour's wages in lieu thereof.

Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Aggrieved Employees to take duty-free, net ten-minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Aggrieved Employees were either not authorized permitted the opportunity to take a rest break or were required to remain under Defendants' control and respond to calls and instructions from management and job demands if and when they even attempted to take one. Upon information and belief, Defendants thus also failed to authorize and permit employees to leave the premises during rest breaks, evidencing Defendants' policy and practice of requiring Plaintiff and the Aggrieved Employees to remain under their control during required off-duty rest break times. Defendants time and again failed to provide Plaintiff and Aggrieved Employees with at least two rest breaks on eight-hour shifts. Although Plaintiff generally received one 15-minute rest break during his shifts, he was not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirement. This practice again unlawfully failed to pay Employees for rest break time, which must be compensated at the regular rate.

Defendants' uniformly applied policies and practices thus resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. Plaintiff and the Aggrieved Employees worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks.

During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Aggrieved Employees were and are under Defendants' control when they are working through rest breaks and remaining under Defendants' control. Defendants have also provided either impermissibly shortened or untimely meal and rest breaks to Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees were thus not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises and otherwise remain under Defendants' control during rest breaks under Defendants' uniformly applied policies and practices.



Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock work and on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was generally not lawfully provided if at all, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. In order to avoid overtime, Defendants' managers would fail to account for all hours worked. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Additionally and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief available for Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Defendants also failed to provide Employees such as Plaintiff at the time of his employment and thereafter with written notice complying with all the requirements of Labor Code § 2810.5, which provides that: "At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing" specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Defendants were required to provide Plaintiff and the aggrieved employee Aggrieved Employees certain specific information upon hiring pursuant to California Labor Code § 2810.5.

Defendants have also consistently failed to provide Aggrieved Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime



and double time wages owed and failure to pay them at the appropriate premium rates, and failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages and by the systematic and unlawful deductions Defendants took from Employee wages. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation owed to Plaintiff and the Aggrieved Employees, during the liability period, including because they did not calculate the regular rate of pay correctly when paying overtime or meal period premiums and because they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, time clock punches were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not. Defendants also failed to accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff and the Aggrieved Employees, including by failing to pay all overtime hours at the correctly calculated overtime premium rate.

Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately reporting total hours worked and total wages earned by Plaintiff and the Aggrieved Employees, along with the appropriate applicable rates, among other requirements. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked.

Defendants also required Plaintiff and the Aggrieved Employees to work hours off the clock for which they were not compensated. They were required to endure off the clock work addressed above during interrupted or otherwise on-duty meal and rest periods and were not provided with sick pay and supplemental sick leave and were subjected to systematic off the clock work. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws.

Additionally, Defendants have regularly required Plaintiff and the Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. These included the cell phone related expenses Plaintiff incurred in responding to calls from managers and foremen. Additionally, Plaintiff was required by Defendants to supply his own tools and equipment to get the job done. Throughout his employment with Defendant, plaintiff purchased a hammer, a tape measurer, a chalk line, pencil squares, a skill saw, a reciprocating saw, a sander, a planer, an air compressor, a nail gun, levels, several ladders, an electric cord, air hoses, and tool belt as required by the job. Plaintiff anticipates that he spent



about \$3,000 to \$3,500 on these tools and equipment. Plaintiff and the Aggrieved Employees must be reimbursed for these necessary business expenses under Labor Code § 2802 and Defendants systematically failed to do so.

PAGA Claim Details, Legal Bases for Violations and Penalties:

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

Failure to Pay Minimum Wages

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

Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants’ control during breaks and due to the work demands placed upon them by Defendants’ management and due to unlawful rounding. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to Aggrieved Employees, including by requiring systematic off the clock work. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay. In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants’ failure to timely pay all wages owed also violated



Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

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

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

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted, and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties or to attend and participate in company required activities or remain under Defendant's control. When considered in combination with the unlawful rounding to their detriment, Aggrieved Employees were not properly compensated, nor were they paid overtime rates or the correct overtime rate (addressed above) for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on information and belief, Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199,



2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7 and Penalties

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

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e., one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

Rest-Break Liability and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations due to the work demands placed upon them by Defendants' management, and Defendants' policy discouraged and effectively prevented Aggrieved Employees from leaving Defendants' premises. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable



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

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

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

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above, and failed to list accurate rates of pay due to miscalculations of overtime and premium pay. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

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

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

Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” As discussed above, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees’ earned wages, including by the above described off the clock work and unlawful rounding and overtime miscalculation. By not compensating Employees for all hours worked, Defendant unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Waiting Time Penalties Pursuant to Labor Code § 203

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



and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due. Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records in Accordance With Labor Code § 1174

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

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

Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave

Defendants violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Defendants have also failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater,



but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.” As also addressed above, Defendants’ strict overtime avoidance policy also compelled Plaintiff’s manager to add what should have been overtime hours to payroll as Plaintiff’s sick days or paid time off days.

Plaintiff accordingly seeks this relief available for Defendants’ failure to provide Aggrieved Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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

Labor Code § 2810.5 provides that: “At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing” specific required information. Upon information and belief, Defendants failed to provide this information to the Aggrieved Employees as required under Labor Code § 2810.5. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2810.5, 1198, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work-related expenses they incurred. These included the cell phone related expenses Plaintiff incurred in responding to calls, texts and emails regarding work-related matters and scheduling from managers and the foremen. Additionally, Plaintiff was required by Defendants to supply his own tools and equipment to get the job done. Defendants thus uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees.

Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

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

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



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

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

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 et seq., including as follows:

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

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

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



employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...”;

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

(e) Unlawful Deductions and Failure to Reimburse Business Expenses: For Defendants’ unlawful deductions from wages and for Defendants’ failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants’ failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §§ 212, 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Accel Framing, Inc. and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants’ employment practices in accordance with the Act.



Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,

D.LAW INC.

Alvin B. Lindsay
a.lindsay@d.law

Cc: Accel Framing, Inc. by Certified Mail

EXHIBIT 3