

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Natalie Haritounian (SBN 324318)
n.haritounian@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Jonas Agle (SBN 352712)
j.agle@d.law
Antonia McKee (SBN 344511)
a.bliznets@d.law
450 N Brand Blvd, Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff TONYA DWYER,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

TONYA DWYER, an individual on behalf
of herself and all others similarly situated ,

Plaintiff,

v.

PIN SETTERS, INC., a California
corporation doing business as COUNTRY
CLUB LANES; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24CV002452

CLASS ACTION

Assigned for All Purposes To:
Hon. Jill Talley

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

Date: May 16, 2025
Time: 9:00 a.m.
Dept.: 23

Original Complaint Filed: February 8, 2024
First Amended Complaint Filed: April 12, 2024
Trial Date: None Set

DECLARATION OF ENOCH J. KIM

I, Enoch J. Kim, declare as follows:

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 Tonya Dwyer (“Plaintiff”), on behalf of herself and all other similarly situated employees of Defendant Pin Setters, Inc., dba Country Club Lanes (“Defendant”) (Plaintiff and Defendant are collectively referred to herein as “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 Class and PAGA Settlement (“Motion”). A true and correct copy of the Parties’ Class Action and PAGA Settlement Agreement (“Settlement Agreement”) is attached hereto as **Exhibit 1**.

Procedural History

3. On February 8, 2024, Plaintiff Tonya Dwyer commenced a Class Action by filing a Complaint alleging ten 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 Liability under Labor Code § 226.7, (4) Rest-Break Liability under Labor Code § 226.7, (5) Violation of Labor Code § 226(a), (6) Violation of Labor Code § 203, (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174, 1174.5, (9) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802, and (10) Violation of Business & Professions Code § 17200 *et seq.* (the “Action”).

4. Plaintiff submitted a PAGA notice (LWDA-CM-1009966-24) to the Labor and Workforce Development Agency (“LWDA”) on February 8, 2024. A true and correct copy of the PAGA notice is attached hereto as **Exhibit 2**.

5. On April 12, 2024, Plaintiff filed her First Amended Complaint (“Operative Complaint”), which adds claims for penalties under PAGA, Labor Code §2698. (*Id.*)

6. Plaintiff contends that Defendant failed to pay all wages due and owing, by requiring off the clock work, unlawfully rounding to their detriment, failing to incorporate non-discretionary

1 cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and
2 pay for overtime pay, failing to provide meal and rest breaks, failing to furnish accurate wage
3 statements, failing to timely pay wages including final wages, failing to maintain accurate records,
4 and failing to reimburse necessary business expenses.

5 **Investigation**

6 7. Before filing the lawsuit, conducted a thorough investigation and researched the facts
7 and circumstances underlying the pertinent issues and applicable law. This required thorough
8 discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described
9 research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel
10 conducted a thorough investigation of the facts and claims giving rise to the action, including (1)
11 conducting informal discovery and meeting and conferring with defense counsel about same; (2)
12 reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing
13 Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential
14 Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage
15 models based on interpretations of California law and the facts and numbers provided by Defendant;
16 and (7) reviewing information provided by Defendant in response to informal discovery and in
17 advance of the mediation. The Parties conducted their own evaluations of the potential recoveries
18 based on the claims alleged in the Action, including consulting experts.

19
20 8. Defendant, for its part, vigorously contested liability, the amount of claimed
21 damages, and the propriety of class certification. After analyzing the relevant documents and other
22 gathered data, Class Counsel believed that this case was appropriate for resolution via mediation.
23 Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims
24 and explore the possibility of settlement.

25 **Settlement Efforts**

26 9. On November 19, 2024, the Parties participated in an all-day mediation with Brandon
27 McKelvey, Esq., a respected and highly experienced mediator in wage and hour class actions, and
28 were able to reach an agreement on general settlement terms. During mediation, counsel for Plaintiff

1 and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both
2 parties of proceeding with a class certification motion, as well as the law unpaid wages, meal
3 periods, rest periods, wage statements, and final pay. Following a full day of mediation, the Parties
4 agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together on
5 a long form Settlement Agreement following mediation, which resulted in the Settlement
6 Agreement before the Court for approval.

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

15 **Summary of the Settlement**

16 11. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay
17 \$375,000.00 (Three Hundred Seventy-Five Thousand Dollars and Zero Cents) ("Gross Settlement
18 Amount" or "GSA") on a non-reversionary basis. (Exhibit 1, Settlement Agreement, ¶ 3.1). In
19 addition to and separate from the Gross Settlement Amount, Defendant will pay the employers'
20 portion of any payroll taxes on the wage allocation portion of the individual settlement payments to
21 Class Members. The Settlement Agreement defines the "Class" as "all persons who worked for
22 Defendant as non-exempt employees in California during the Class Period," which is February 8,
23 2020, through January 18, 2025. The Settlement Agreement also defines "Aggrieved Employees"
24 as "all persons who worked for Defendant as non-exempt employees in California at any time during
25 the PAGA Period," which is February 8, 2023, through January 18, 2025. The "Net Settlement
26 Amount," available for distribution to Class Members, is the Gross Settlement Amount, less the
27 PAGA Penalties payment, Class Representative Service Payment, Class Counsel Fees Payment,
28 Class Counsel Litigation Expenses Payment, and the Administration Costs Payment. These amounts

are detailed as follows:

- Class Counsel Fees and Litigation Expenses Payment: Up to one-third of the Gross Settlement Amount, or **\$125,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action and up to **\$20,000.00** for actual costs incurred in this Action. (Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Representative Service Payment: Up to **\$7,500.00** to Plaintiff as an award for her service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Settlement Administration Costs Payment: Up to **\$8,750.00** to the Settlement Administrator for its fees and costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3);
- PAGA Penalties Payment: **\$20,000.00** for settlement of claims for civil penalties under PAGA, with 25% (\$5,000.00) to be paid on a pro-rata basis to the Aggrieved Employees ("Individual PAGA Payments") and 75% (\$15,000.00) allocated to the LWDA ("LWDA PAGA Payment") (Exhibit 1, Settlement Agreement, ¶ 3.2.5).

12. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **\$193,750.00**. Each Class Member's share of the Net Settlement Amount ("Individual Settlement Payment") will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Exhibit 1, Settlement Agreement, ¶ 1.24). For the approximately 370 Class Members (if no exclusions), the average gross Individual Share Payment, using a straight average, is \$523.65. 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 Class Members. (Exhibit 1, Settlement Agreement, ¶ 3.2.5.2).

13. Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Information to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. 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) days following the receipt of Class Data via first class United States Postal Service ("USPS") mail. (Exhibit 1, Settlement Agreement, ¶ 7.4.2). The Class Notice

1 includes a summary of the case and settlement terms and provides Class Members with detailed
2 instructions on how to exclude themselves, object to the settlement, and dispute the number of
3 workweeks and/or pay periods attributed to each Class Member per Defendant's records. (Exhibit
4 A, Class Notice). Class Members will have forty-five (45) days from the mailing of the Class Notice
5 (plus an additional fourteen (14) calendar days if they receive a re-mailed Notice) to opt out of or
6 object to the Settlement or to dispute the number of work weeks and/or pay periods. (Exhibit 1,
7 Settlement Agreement, ¶ 7.4.4).

8 **Certification for Settlement Purposes Only is Appropriate**

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

19 15. Numerosity and Ascertainability. The putative Class is so numerous that joinder of
20 all members is impractical. Class Members are all current and former non-exempt, hourly employees
21 of Defendant employed in California during the Class Period (February 8, 2020, to January 18,
22 2025). Defendant has identified 370 Class Members based on a review of its payroll and personnel
23 records. Thus, the requirements of numerosity and ascertainability are met here.

24 16. Well-Defined Community of Interest. Plaintiff contends, and Defendant does not
25 dispute for settlement purposes only, that common issues of fact and law predominate as to each of
26 the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*,
27 a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay
28 wages and overtime due to allegedly common off-the-clock work, failure to reimburse business

1 expenses; the resulting failure to pay final wages when required and to provide accurate wage
2 statements; and largely derivative claims under the UCL and PAGA. Plaintiff contends Defendant's
3 practices affected Class Members in the same way and presents questions that are suitable for
4 common adjudication because all Class Members were subject to the same employment policies and
5 practices. The outcome of litigation in this matter depends upon questions that are common to Class
6 Members.

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

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

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

1 the same employment policies, and Plaintiff contends the practices applied uniformly to all Class
2 Members.

3 20. Plaintiff contends that class resolution is superior to other available methods for the
4 fair and efficient adjudication of the controversy as there is little interest or incentive for Class
5 Members to individually control the prosecution of separate actions. Although the alleged injury
6 resulting from Defendant's policies and practices are allegedly real and significant, the cost of
7 individually litigating each such case against Defendant would easily exceed the value of any relief
8 that could be obtained by any one Class Member individually. If Class Members are forced to litigate
9 their claims individually this would result in over 370 individual actions against Defendant. Here,
10 the alternative methods of resolution are individual suits for relatively small amounts. Hence, an
11 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
12 dwarf a potential recovery.

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

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

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

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

1 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that
2 there were substantial risks and uncertainty in proceeding with litigation. As described below,
3 Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to
4 class certification. Thus, while Plaintiff was prepared to litigate these claims through class
5 certification, and ultimately trial, success was far from certain. Assistance from a well-respected
6 mediator ensured that negotiations were non-collusive and well-informed.

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

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

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

14 24. Plaintiff's claims are based on Defendant's alleged failure to pay wages (including
15 overtime), failure to provide meal and rest periods, failure to reimburse business expenses, the
16 resulting failure to pay final wages when required and provide accurate wage statements, and largely
17 derivative claims under the UCL and PAGA.

18 25. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
19 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
20 eight hours in a day and 40 hours in a week. Specifically, Plaintiff alleges that Defendant required
21 Plaintiff and Class Members to perform pre-shift and post-shift off the clock work for which they
22 were not paid. For instance, Plaintiff alleges that Class Members were required to arrive to work
23 several minutes prior to the start of their scheduled shifts to assist customers and coworkers, to clock
24 out and continue working after the end of their scheduled shifts, and to receive calls from Defendant
25 with work demands outside of scheduled work hours. Plaintiff also alleges that Defendant failed to
26 incorporate non-discretionary, performance-based cash awards, bonuses, and/or shift differential
27 pay into the regular rate of pay used to calculate and pay overtime wages to Class Members. (*Id.* at
28

¶ 42.) Moreover, Plaintiff alleged that Defendant had a consistent policy and practice of unlawfully rounding hours worked to the detriment of the Class Members.

26. Defendant contends that it did not require off the clock work, paid for all reported hours worked, that Class Members were instructed and required to record all hours worked, that any alleged off the clock work was performed without Defendant's knowledge and was de minimis, that any bonuses or incentives paid to Class Members were discretionary and not includable in the regular rate of pay calculation, and that it paid wages at the proper rates. 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.

27. Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff and Class Members. For example, Plaintiff alleges that Defendant's policy required Class Members to clock out for their scheduled meal periods but continue working, and Class Members were not paid for this time. This resulted in Plaintiff and Class Members working during their meal periods or missing their meal periods entirely. Moreover, Plaintiff alleges that Defendant failed to provide a second meal period to Plaintiff and Class Members when they worked over 10 hours in a day.

28. Defendant contends that Class Members were given a reasonable opportunity to take their meal periods, and when compliant meal periods were not provided, Defendant provided premium pay to Class Members as reflected in their time and pay records. Defendant also contends that the relevant Class Members who worked 12-hour shifts signed valid meal period waivers. Defendant further contends that the meal break claim requires individualized inquiries which would preclude class certification. If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

29. Plaintiff also contends that Defendants did not provide Class Members with paid 10-minute rest breaks for every hours or major fraction thereof. Plaintiff contends that Class Members consistently worked in excess of consecutive three and a half-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive three and a half-hour shift but were

1 required to work through their rest breaks during their shifts when they were unable to find coverage
2 for their breaks.

3 30. Defendant maintains that it did provide a reasonable opportunity for Class Members
4 to take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not
5 provided. Considering that unlike meal periods, rest breaks need not be recorded, these violations
6 would likely be difficult to prove at trial and potentially depress the damages ultimately awarded.
7 Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim.

8 31. Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members
9 to use their cellular phones for work, for which they were not reimbursed. Defendant maintained
10 that Plaintiff and Class Members were not required to use their personal cell phones to perform their
11 job duties and that individualized issues relating to this claim would preclude class certification.

12 32. As for the wage statement and waiting time penalties claims, Defendant contends
13 that these claims are merely derivative of the underlying claims and that Plaintiff and Class Members
14 would be unable to first establish liability for the underlying claims for the reasons described above.
15 Defendant further contends that even if they could first establish liability for the underlying claims,
16 Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and
17 knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate
18 wage statements and pay all wages due to Plaintiff and Class Members. Thus, Defendant contends
19 that the wage statement and waiting time penalties claims to have little to no value.

20 33. Similarly, Defendant contends that the PAGA claim is also derivative of the
21 underlying claims in the Action and ultimately fails because the underlying claims have no merit.
22 Defendant also contends that even if Plaintiff and Class Members could establish Labor Code
23 violations, the Court has the discretion to award less than the maximum civil penalty amount and
24 would award substantially less civil penalties here because Defendant acted in good faith to comply
25 with the relevant wage and hour laws and any violations were minor and technical in nature.

26 34. Defendant generally denies all claims alleged in the Action and further denies class
27 and/or representative treatment is appropriate for any purpose other than this Settlement and that it
28 complied with all applicable laws. However, after careful consideration, Defendant has concluded

1 that further litigation would be protracted and expensive and that it is desirable that the Action be
2 fully and finally settled in the manner and upon the terms and conditions herein.

3 35. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the
4 Action have merit, they also acknowledge the expense, delay, and risks of continued litigation.
5 Although the Parties engaged in significant informal discovery in advance of mediation, the Parties
6 still had significant discovery to complete had the matter not settled. This would have required the
7 expenditure of substantial time and resources by both Parties that would have very likely spanned
8 several years. Even if Plaintiff were to certify the classes, the Parties would incur considerably more
9 attorney fees and costs through a possible decertification motion, trial, and possible appeal. This
10 Settlement avoids those risks and the accompanying expense.

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

12 36. Plaintiff had not yet filed her motion for class certification, and as such, the extent to
13 which Plaintiff proposed classes were certifiable is somewhat speculative. Absent a settlement, there
14 was a risk that there would not be a certified class at the time of trial, or if there were, it could consist
15 of a significantly smaller group of employees than the proposed Settlement Class, resulting in less
16 overall recovery.

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

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

1 38. Class Counsel will be submitting the Settlement Agreement and this Motion to the
2 LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(1)(2).

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

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

9 40. The strength of the Plaintiff's case in light of the settlement amount is deemed by
10 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
11 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay minimum
12 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage
13 statements, failed to pay all wages upon termination, and failed to reimburse for business expenses,
14 all in violation of California law. Plaintiff seeks related violations of California's Business &
15 Professions Code, penalties pursuant to Labor Code § 2699 *et seq.* Summary calculations for
16 estimated liability for each of these claims follow.

17 Failure to Pay Minimum and Overtime Wages:

18 41. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
19 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
20 eight hours in a day and 40 hours in a week. Specifically, Plaintiff alleges that Defendant required
21 Plaintiff and Class Members to perform pre-shift and post-shift off the clock work for which they
22 were not paid. For instance, Plaintiff alleges that Class Members were required to arrive to work
23 several minutes prior to the start of their scheduled shifts to assist customers and coworkers, to clock
24 out and continue working after the end of their scheduled shifts, and to receive calls from Defendant
25 with work demands outside of scheduled work hours.

26 42. Plaintiff also alleges that Defendant failed to incorporate non-discretionary,
27 performance-based cash awards, bonuses, and/or shift differential pay into the regular rate of pay
28 used to calculate and pay overtime wages to Class Members. Moreover, Plaintiff alleged that

1 Defendant had a consistent policy and practice of unlawfully rounding hours worked to the
2 detriment of the Class Members.

3 43. Defendant contends that it did not require off the clock work, paid for all reported
4 hours worked, that Class Members were instructed and required to record all hours worked, that any
5 alleged off the clock work was performed without Defendant's knowledge and was de minimis, that
6 any bonuses or incentives paid to Class Members were discretionary and not includable in the
7 regular rate of pay calculation, and that it paid wages at the proper rates. Defendant also argues that
8 given its written policies and practices, any unrecorded hours are likely subject to individualized
9 inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel
10 applied a significant discount to damages based on this theory.

11 44. Class Counsel estimated Defendant's exposure on the unpaid wages claims to be
12 approximately \$142,405.66 (assuming 10 minutes of off the clock work per shift and 39.8% of off
13 the clock hours attributable to overtime). However, given Defendants' defenses and the potential
14 hurdles facing certification of off-the-clock claims, Class Counsel applied an 80% discount making
15 for an adjusted realistic exposure of \$28,481.13 for Defendant.

16 Meal Periods and Rest Breaks:

17 45. Plaintiff argued that Defendant had a common practice and policy of denying compliant
18 meal periods. For example, Plaintiff alleges that Defendant's policy required Class Members to
19 clock out for their scheduled meal periods but continue working, and Class Members were not paid
20 for this time. This resulted in Plaintiff and Class Members working during their meal periods or
21 missing their meal periods entirely. Moreover, Plaintiff alleges that Defendant failed to provide a
22 second meal period to Plaintiff and Class Members when they worked over 10 hours in a day.

23 46. For each meal period missed, of less than 30 minutes, or taken late for which the employee
24 was not provided a reasonable opportunity to take a complete and timely meal period, an employer
25 must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional
26 hour of compensation is referred to as "premium pay." To comply with these laws, every employer
27 must keep, for each employee, accurate time records showing when the employee begins and ends
28 each work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3). Plaintiff

1 alleges that Defendants failed to pay the legally required premium at their regular rate of pay
2 whenever meal periods were missed, interrupted, or late.

3 47. Defendant contends that Class Members were given a reasonable opportunity to take their
4 meal periods, and when compliant meal periods were not provided, Defendant provided premium
5 pay to Class Members as reflected in their time and pay records. Defendant also contends that the
6 relevant Class Members who worked 12-hour shifts signed valid meal period waivers. Defendant
7 further contends that the meal break claim requires individualized inquiries which would preclude
8 class certification. If Defendant's contentions are proven true and prevail in trial, the likely outcome
9 would be no recovery for the Class Members on the meal break claim.

10 48. Class Counsel estimated Defendant's maximum exposure on the meal period claim at
11 approximately \$173,347.00 (meal period premiums due with an offset for meal period premiums
12 paid). However, given Defendants' defenses and the potential hurdles facing certification of the
13 meal break claim, Class Counsel applied a 50% discount making for an adjusted realistic exposure
14 of \$86,673.50 for Defendant.

15 49. Rest Breaks: Plaintiff contended that Defendant did not provide Class Members with
16 timely paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiff contends
17 that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled
18 to paid rest breaks of not less than ten minutes for each consecutive four-hour shift but were required
19 to work through their rest breaks during their shifts when they were unable to find coverage for their
20 breaks.

21 50. Defendant maintains that it did provide a reasonable opportunity for Class Members to
22 take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not
23 provided. (Kim Decl., ¶ 11.) Considering that unlike meal periods, rest breaks need not be recorded,
24 these violations would likely be difficult to prove at trial and potentially depress the damages
25 ultimately awarded.

26 51. Class Counsel estimated Defendant's maximum liability exposure on the rest break
27 period claim at approximately \$692,516.00 assuming a 95.6% violation rate. However, given
28 Defendant's contentions and the difficulties facing certification of rest break claims, Class Counsel

1 applied an 80% discount making for an adjusted realistic exposure of \$138,503.20 for Defendant.
2 Owing to the arguments above and the fact that the recording of rest periods is not required, this
3 claim was substantially discounted.

4 Inaccurate Wage Statement Violations:

5 52. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial
6 violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of
7 \$4,000 per employee. Plaintiff alleged Defendant issued wage statements to Plaintiff and the Class
8 Members that did not accurately list all hours worked by omitting off-the-clock work and
9 inaccurately listing applicable hourly rates.

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

16 54. Class Counsel estimated Defendant's maximum total exposure on the section 226 claim
17 at approximately \$225,450.00 (assuming \$50/\$100 for initial and subsequent violations and 161
18 employees during the relevant period and a maximum of \$4,000.00 per employee). After
19 considering Defendants' contentions and the potential class certification issues, Class Counsel
20 discounted this amount by 80% to get an adjusted realistic exposure of \$45,090.00.

21 Failure to Pay Final Wages at Termination or Separation:

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

26 56. Section 203 further provides that if an employer willfully fails to pay an employee all
27 wages due at termination or within 72 hours of resignation, then that employee's wages will continue
28 as a penalty until paid for a period of up to 30 days from the date they were due. Because Class

1 Members stopped working for Defendant but were allegedly not paid their full compensation for the
2 reasons discussed above, Class Members did not receive all wages due upon termination of
3 employment.

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

15 58. Class Counsel estimated Defendant’s maximum total exposure on the section 203 claim
16 at approximately \$785,270.00 (212 terminated employees during the relevant period x 30 days x
17 average hourly rate per year x 6.8 hours per work day). Given the foregoing arguments, Class
18 Counsel discounted this amount by 80% to get an adjusted realistic exposure of \$157,054.00.

19 Failure to Reimburse for Necessary Business Expenditures:

20 59. Under Labor Code § 22802(a) Defendant must indemnify Plaintiff and Class Members
21 for all necessary expenditures or losses incurred in direct consequence of the discharge of their
22 duties. As discussed above, Plaintiff alleges that Plaintiff and Class Members incurred necessary
23 expenditures in the performance of their job duties for Defendant, including the cost of personal
24 cell phone usage for work related purposes, but were not reimbursed for those expenses by
25 Defendant. Defendant contends that they had an expense reimbursement policy and did reimburse
26 Plaintiff and Class Members for any business expenses incurred pursuant to their policy.

27 60. Plaintiff estimated Defendant’s total exposure on the unreimbursed business expenses
28 claim at approximately \$18,500.00 (\$50 x 370 Class Members). However, given Defendant’s

1 reimbursement policy and the potential for the need for individualized inquiries making class
2 certification of this claim difficult, Class Counsel applied an 80% discount to get an adjusted
3 realistic exposure of \$3,700.00

4 PAGA Penalties:

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

16 62. The provisions of the Labor Code potentially triggering PAGA penalties in this case
17 include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA
18 penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that "a court
19 may award a lesser amount than the maximum civil penalty amount specified by this part if, based
20 on the facts and circumstances of the particular case, to do otherwise would result in an award that
21 is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App.
22 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant contested
23 Plaintiffs' claim for PAGA penalties.

24 63. PAGA penalties are also derivative of each and every other claim, and Defendant argued
25 the PAGA claims would be subject to the same defenses as the underlying claims, and as well as
26 additional equitable defenses, including substantial compliance. Finally, under *Amaral v. Cintas*
27 *Corp.* (2008) 163 Cal.App.4th 1157, Defendant asserted that penalties under PAGA could, at best,
28

1 be awarded only at the rates obtainable for initial violations under the applicable statutes, because
2 Defendant had never been notified of the alleged violations. *Id.* at 1208-1209.

3 64. Plaintiff estimated Defendant's total exposure on the PAGA claim at approximately
4 \$233,500.00 (2,335 PAGA Pay Periods x \$100). However, Class Counsel also estimated any PAGA
5 recovery would be substantially reduced and applied discounts in light of the countervailing
6 arguments with regard to the other causes of action and the Court's power to award "a lesser amount
7 than the maximum civil liability." The PAGA allocation agreed upon by the Parties therefore was
8 **\$20,000.00**, subject to the Court's final approval. 75% of that amount (\$15,000.00) will be paid to
9 the LWDA out of the Gross Settlement Amount, and the remaining 25% (\$5,000.00) will remain in
10 the PAGA Settlement Fund for distribution to the Aggrieved Employees.

11 Unfair Business Practices

12 65. Plaintiff pled this cause of action to augment their other causes of action and aid in their
13 prosecution. Business & Professions Code § 17208 extends the statute of limitations on Plaintiff's
14 wage claims, which qualify as unfair business practices, to four years rather than the three years
15 provided by statute.

16 Summary

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

23 67. Class Counsel applied reasonable and justified discounts, considering the facts and legal
24 contexts outlined above. These substantial discounts were necessary in light of Defendant's
25 contentions and denial of liability. This Settlement, like most others, was the product of
26 compromise. As addressed above, Plaintiff estimated that Defendant faced approximately
27 \$479,501.83 in total realistic exposure on Plaintiff's main claims. The Gross Settlement Amount of
28 \$375,000.00 therefore represents a recovery for the Class Members of approximately 78.20% of the

1 total realistic exposure Plaintiff estimated Defendant could face on these class-wide claims. Class
2 Counsel submits that this is an optimal result for the Class in light of all of the factors described
3 above.

4 **Class Counsel Fees Payment is Fair and Reasonable**

5 68. Under the Settlement, Class Counsel requests, without opposition from Defendant, an
6 award of \$125,000.00 for attorneys' fees and up to \$20,000.00 for reasonable expenses incurred to
7 prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel
8 for the substantial work they have put into this case and, moreover, the risk they assumed by taking
9 it in the first place as they will not receive any compensation for their efforts until recovery is
10 obtained for the Class. The attorneys' fees award is intended to reimburse Class Counsel for all
11 uncompensated work that they have already done and for all the work they will continue to do in
12 carrying out and overseeing the notification to Class Members, communicating with Class Members
13 regarding their claims, and assisting in the administration of the Settlement if it is preliminarily
14 approved. The requested fee is reasonable for the services provided to Class Members and for the
15 benefits they are to receive.

16 **Class Representative Enhancement and Service Payment is Fair and Reasonable**

17 69. Plaintiff is entitled to a reasonable service payment for her efforts and initiative in
18 bringing and helping to prosecute this action. Plaintiff spent significant time better apprising herself
19 of her rights, deciding whether remedial action should be taken and how it should be taken, searching
20 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the
21 case and the law.

22 70. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on
23 to discuss every aspect of her case. Plaintiff provided Class Counsel with information about
24 Defendant and about the industry generally, produced and reviewed documents, identified
25 witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation
26 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the
27 Settlement Agreement.

71. In light of the foregoing, Class Counsel believes that the \$7,500.00 incentive award to the Class Representative is fair and reasonable.

Proposed Class Notice Provides Adequate Notice

72. The notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement as Exhibit A. Under the Settlement, Defendant will deliver the Class Information to the Settlement Administrator in the form of a Microsoft Excel spreadsheet not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Information to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. 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 forty-five (45) days following the Preliminary Approval Date via first class United States Postal Service (“USPS”) mail. (Exhibit 1, Settlement Agreement, ¶¶ 7.4.2, 7.4.4). 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 A, Class Notice). Class Members will have forty-five (45) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days if they receive a re-mailed Notice) to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods. (Exhibit 1, Settlement Agreement, ¶ 7.4.4). This is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Notice.

73. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the settlement, and their options thereunder. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). It provides for a specific procedure to seek exclusion from the Class, disputing payments and Class Information, challenging workweek and pay period data, and lodging objections to the settlement. (Exhibit 1, Settlement Agreement, ¶ 7.5)-7.7). In the Class Notice, Class Members will also receive Class Counsel’s contact information so they can speak to attorneys conversant with the legal and factual issues involved in this case, as well as the contact

1 information for the Settlement Administrator. The efforts taken to ensure that Class Members
2 receive the Class Notice and are well informed about the settlement are reasonable and provide the
3 best notice practicable under the facts.

4 **Qualifications and Adequacy of Class Counsel**

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

10 75. D.Law is well-qualified and has ample experience, knowledge, and resources to act as
11 counsel and represent Plaintiff and the putative Class and Aggrieved Employees in this action. Our
12 practice is exclusively focused on employment matters and representing plaintiffs in wage and hour
13 actions with the same or similar causes of actions brought forth in the matter pending before this
14 Court.

15 76. D.Law has litigated and successfully resolved many wage and hour class action cases
16 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa
17 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.
18 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in
19 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in
20 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,
21 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-
22 L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,
23 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632
24 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
25 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
26 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
27 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of
28 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et

1 al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time
2 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.
3 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis
4 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v.
5 Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3
6 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk
7 Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont
8 Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT
9 Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa
10 MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court
11 of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California,
12 Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church &
13 Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL
14 Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo
15 Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account
16 Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369),
17 Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421),
18 Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v.
19 Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha
20 Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-
21 CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of
22 California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court
23 of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern
24 District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al.
25 (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc.
26 (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc.
27 (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat
28 International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care

Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743), Viridi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

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

78. Attorney Natalie Haritoonian is Senior Counsel at D.Law and counsel of record for Plaintiff. Ms. Haritoonian received her Bachelor of Arts in political science from the University of California, Los Angeles, in 2014, and then earned her Juris Doctorate from the University of Southern California, Gould School of Law in 2018. Upon graduating from law school, Ms. Haritoonian has exclusively focused her practice on representing employees, including in wage-and-hour class actions. During her career, Ms. Haritoonian has represented employees in wage-and-hour class action lawsuits as lead or co-lead counsel, and has also obtained six and seven figure settlements against a range of defendants.

79. The collective experience of the D.Law attorneys in litigating employment wage and hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and generally negotiating fair and reasonable class and representative action settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the constantly evolving substantive law (state and federal), as well as the procedural law of class and representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the

1 skills and knowledge developed over decades of prosecuting and defending wage and hour class
2 actions to fairly and adequately represent the interests of the Class Members and aggrieved
3 employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law
4 are well-qualified to act as class counsel and represent the Plaintiff and the putative Class Members
5 and aggrieved employees in this action.

6 80. We understand the responsibilities owed as counsel to the Settlement Class Members and
7 aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims
8 asserted in this action and have remained committed to dedicating the resources necessary to
9 represent the Settlement Class and vigorously pursue their claims. Based upon my experience and
10 understanding of the claims and defenses in this action, I believe the settlement is fair, adequate,
11 and reasonable for the Class Members and aggrieved employees and all involved, and that the
12 Settlement is well within the range of reasonableness that would permit it to be finally approved. I
13 am not aware of any conflict of interest with Plaintiff or any other Class Member that would interfere
14 with the duties as Class Counsel.

15 81. On April 23, 2025, Plaintiff submitted the Class and PAGA Action Settlement Agreement
16 and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement and
17 supporting documents to the LWDA. A true and correct copy of the confirmatory email from the
18 LWDA is attached hereto as **Exhibit 3.**

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

21 Executed this 23rd day of April 2025, in Glendale, California

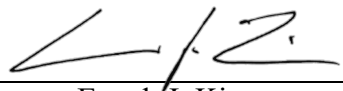
22 
23 _____
24 Enoch J. Kim

EXHIBIT 1

D.LAW, INC.
 Emil Davtyan (SBN 299363)
Emil@d.law
 David Yeremian (SBN 226337)
d.yeremian@d.law
 Enoch Kim (SBN 261146)
e.kim@d.law
 Natalie Haritounian (SBN 324318)
n.haritounian@d.law
 Jonas Agle (SBN 352712)
j.agle@d.law
 450 N Brand Blvd., Suite 840
 Glendale, CA 91203
 Telephone: (818) 962-6465
 Facsimile: (818) 962-6469

Attorneys for Plaintiff TONYA DWYER,
 on behalf of herself and others similarly situated

DUGGAN MCHUGH LAW CORPORATION
 Jennifer E. Duggan (SBN 183833)
jennifer@dugganmchugh.com
 Katie A. Collins (SBN 309475)
katie@dugganmchugh.com
 641 Fulton Ave., Suite 100
 Sacramento, CA 95825
 Telephone: (916) 550-5309

Attorneys for Defendant Pin Setters, Inc. dba Country Club Lanes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO**

TONYA DWYER, an individual on behalf
 of herself and all others similarly situated,

Plaintiff,

vs.

PIN SETTERS, INC., a California
 corporation doing business as COUNTRY
 CLUB LANES; and DOES 1 through 50,
 inclusive,

Defendants.

Case No. 24CV002452

Assigned for All Purposes To:
 Hon. Jill Talley
 Dept.: 23

**CLASS ACTION AND PAGA
 SETTLEMENT AGREEMENT**

Original Complaint filed: February 8, 2024
 First Amended Complaint: April 12, 2024
 Trial Date: None set

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between Plaintiff Tonya Dwyer (“Plaintiff”) and Defendant Pin Setters, Inc. dba Country Club
3 Lanes (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,”
4 or individually as “Party.”

5 1. **DEFINITIONS.**

6 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendant captioned *Tonya Dwyer v. Pin Setters, Inc. dba Country Club Lanes*, No.
8 24CV002452, filed on February 8, 2024, in Sacramento County Superior Court.

9 1.2 “Administrator” means Apex Class Action LLC the neutral entity the Parties have agreed
10 to appoint to administer the Settlement.

11 1.3 “Administration Costs” means the amount the Administrator will be paid from the Gross
12 Settlement Amount to reimburse its reasonable fees and expenses, which are anticipated to not
13 exceed \$8,750.00.

14 1.4 “Aggrieved Employee” means all persons who worked for Defendant as non-exempt
15 employees in California at any time during the PAGA Period.

16 1.5 “Class” means all persons who worked for Defendant as non-exempt employees in
17 California at any time during the Class Period.

18 1.6 “Class Counsel” means Emil Davtyan, David Yeremian, Enoch Kim, Natalie
19 Haritounian, and Jonas Agle of D.Law, Inc.

20 1.7 “Class Counsel Fees Payment” means the amount allocated to Class Counsel for
21 reimbursement of reasonable attorneys’ fees incurred to prosecute the Action.

22 1.8 “Class Counsel Litigation Expenses Payment” means the amount allocated to Class
23 Counsel for reimbursement of reasonable expenses and costs incurred to prosecute the Action.

24 1.9 “Class Data” means Class Member identifying information in Defendant’s possession
25 including the Class Member’s name, last-known mailing address, Social Security number, and
26 number of Workweeks and PAGA Pay Periods.

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

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

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

1.13 “Class Period” means the period from February 8, 2020 through January 18, 2025.

1.14 “Class Representative” means the named Plaintiff Tonya Dwyer in the Action seeking Court approval to serve as a Class Representative.

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

1.16 “Court” means the Superior Court of California, County of Sacramento.

1.17 “Defendant” means named Defendant Pinsetters, Inc. dba Country Club Lanes.

1.18 “Defense Counsel” means Jennifer E. Duggan and Katie A. Collins of Duggan McHugh Law Corporation.

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

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

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

1.22 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.23 “Gross Settlement Amount” means Three Hundred Seventy-Five Thousand Dollars (\$375,000.00), which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8 below.

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

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

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

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

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

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

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

1.31 “Operative Complaint” means the operative First Amended Complaint filed in the Action on April 12, 2024.

1.32 “PAGA Period” means the period from February 8, 2023 through January 18, 2025.

1.33 "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.34 "PAGA Notice" means Plaintiff Dwyer's February 8, 2024 letter to the LWDA and Defendant providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.35 "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$20,000.00), allocated 25% to the Aggrieved Employees (\$5,000.00) and 75% to the LWDA (\$15,000.00) in settlement of PAGA claims.

1.36 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.37 "Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.38 "Plaintiff" means Tonya Dwyer, the named plaintiff in the Action.

1.39 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.40 "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.41 "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.42 "Released Parties" means: Defendant and its present and former owners, officers, shareholders, directors, agents, members, managers, employees, attorneys, insurers, parent companies, successors, affiliates or subsidiaries, and assigns.

1.43 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.44 "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.

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

1.46 “Workweek” means any week during which a Class Member worked for Defendant for at least one day during the Class Period.

2. **RECITALS.**

2.1 On February 8, 2024, Plaintiff Dwyer filed a Class Action Complaint alleging 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 Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (8) Penalties Pursuant to Labor Code § 203; (9) Reimbursement of Necessary Expenditures Under Labor Code § 2802; and (10) Violation of Business & Professions Code § 17200 *et seq.*. On February 8, 2024, pursuant to Labor Code §2699.3, subd.(a), Plaintiff Dwyer gave timely notice to the LWDA and Defendant that Plaintiff Dwyer intended to proceed with a representative action under PAGA (LWDA-CM-1009966-24). On April 12, 2024, after the 65-day statutory period passed, Plaintiff Dwyer filed her First Amended Complaint, adding claims for penalties pursuant to Labor Code § 2698, *et seq.*

2.2 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

2.3 On November 19, 2024, the Parties participated in an all-day mediation presided over by Mediator Brandon McKelvey and were able to reach an agreement on general settlement terms. The Parties memorialized their agreement in a Memorandum of Understanding on November 22, 2024.

2.4 Prior to mediation, Plaintiff obtained, through informal discovery, documents, and information obtained pertaining to her wage and hour claims, including, but not limited to, wage and hour policy and procedure documents, an adequate sampling of employee time and payroll records, and the exchanges of relevant data points pertaining to the Class and PAGA claims.

1 Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk*
2 *v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
3 *Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

4 2.5 The Court has not granted class certification because the Parties engaged in mediation
5 prior to addressing the issue of class certification.

6 2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
7 other pending matter or action asserting claims that will be extinguished or affected by the
8 Settlement.

9 3. **MONETARY TERMS.**

10 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below,
11 Defendant will pay Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) and no more
12 as the Gross Settlement Amount and will separately pay any and all Employer Taxes owed on the
13 Wage Portions of the Individual Class Payments. The Administrator will disburse the entire Gross
14 Settlement Amount without asking or requiring Participating Class Members or Aggrieved
15 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
16 will revert to Defendant.

17 3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct
18 the following payments from the Gross Settlement Amount, in the amounts specified by the Court
19 in the Final Approval:

20 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of
21 not more than \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA
22 Payment the Class Representative is entitled to receive as a Participating Class Member.
23 Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that
24 does not exceed this amount. As part of the Final Approval motion, Plaintiff will seek Court
25 approval for any Class Representative Service Payment no later than sixteen (16) court days prior
26 to the Final Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class
27 Representative Service Payment less than the amount requested, the Administrator will retain the
28 remainder in the Net Settlement Amount to be distributed to Participating Class Members. The

1 Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff
2 assumes full responsibility and liability for employee taxes owed on the Class Representative
3 Service Payment.

4 3.2.2 To Class Counsel: A Class Counsel Fees Payment of \$125,000.00 and a Class
5 Counsel Litigation Expenses Payment of not more than \$20,000.00. Defendant will not oppose
6 requests for these payments provided that the requests do not exceed these amounts. Plaintiff
7 and/or Class Counsel will file a motion for Class Counsel Fees and Litigation Expenses Payment
8 no later than sixteen (16) court days prior to the Final Approval Hearing, or as otherwise ordered
9 by the Court. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel
10 Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the
11 remainder to the Net Settlement Amount for distribution to Participating Class Members.
12 Released Parties shall have no liability to Class Counsel or any other Plaintiff's counsel arising
13 from any claim to any portion of Class Counsel Fee Payment and/or Class Counsel Litigation
14 Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class
15 Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full
16 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class
17 Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
18 from any dispute or controversy regarding any division or sharing of any of these Payments.

19 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$8,750.00
20 except for a showing of good cause and as approved by the Court. To the extent the
21 Administration Expenses are less or the Court approves payment of less than \$8,750.00, the
22 Administrator will retain the remainder in the Net Settlement Amount to be distributed to
23 Participating Class Members.

24 3.2.4 To Each Participating Class Member: An Individual Class Payment is calculated by
25 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
26 Participating Class Members during the Class Period, and (b) multiplying the result by each
27 individual Participating Class Member's Workweeks.
28

3.2.4.1 Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining ninety percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$5,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant represents that there are 378 Class Members who collectively worked

1 a total of 15,968 workweeks during the Class Period, and 194 Aggrieved Employees who worked
2 a total of 4,692 Pay Periods during the PAGA Period.

3 4.2 Class Data. Not later than fourteen (14) days after the Court grants Preliminary Approval
4 of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a
5 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
6 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement
7 and for no other purpose, and restrict access to the Class Data to Administrator employees who
8 need access to the Class Data to effect and perform under this Agreement. Defendant has a
9 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted
10 class member identifying information and to provide corrected or updated Class Data as soon as
11 reasonably feasible. Without any extension of the deadline by which Defendant must send the
12 Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts,
13 in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class
14 Data.

15 4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
16 Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting
17 the funds to the Administrator 30 days after final approval of the Settlement if no objection is
18 filed; if an objection is filed, the Gross Settlement Amount will be funded on the 65th day
19 following entry of Judgment (provided no appeal is filed), or if an appeal to the Judgment is filed,
20 the Gross Settlement Amount will be funded within five (5) business days after the Judgment is
21 affirmed and the appellate proceeding opposing the Settlement has been finally dismissed with
22 no material change to the terms of this Settlement and with no right to pursue further remedies or
23 relief.

24 4.4 Payments from the Gross Settlement Amount. Within fourteen (14) days after Defendant
25 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
26 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
27 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
28 Payment, and the Class Representative Service Payment.

1 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or
2 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The
3 face of each check shall prominently state the date (180 days after the date of mailing) when the
4 check will be voided (“Void Date”). The Administrator will cancel all checks not cashed by the
5 Void Date. The Administrator will send checks for Individual Settlement Payments to all
6 Participating Class Members (including those for whom the Class Notice was returned
7 undelivered). The Administrator will send checks for Individual PAGA Payments to all
8 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
9 Employees (including those for whom Class Notice was returned undelivered). The Administrator
10 may send Participating Class Members a single check combining the Individual Class Payment
11 and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator
12 must update the recipients’ mailing addresses using the National Change of Address Database.

13 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class
14 Members whose checks are returned undelivered without USPS forwarding address. Within seven
15 (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS
16 forwarding address provided or to an address ascertained through the Class Member Address
17 Search. The Administrator need not take further steps to deliver checks to Class Members whose
18 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
19 replacement check to any Class Member whose original check was lost or misplaced, requested
20 by the Class Member prior to the void date.

21 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA
22 Payment check is uncashed and canceled after the void date, the Administrator shall transmit the
23 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
24 name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of
25 California Code of Civil Procedure Section 384, subd. (b).

26 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall
27 not obligate Defendant to confer any additional benefits or make any additional payments to Class
28 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

5.1 **Plaintiff's Release.** Plaintiff and Plaintiff's representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint of the Action and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice. ("Plaintiffs' Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 **Released Class Claims:** 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 alleged or which could have reasonably been alleged based on the facts in the Operative Complaint that arose during the

Class Period (the “Released Class Claims”). Except as set forth in Paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

5.3 Released PAGA Claims: All 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 civil penalties that are alleged or which reasonably could have been alleged based on the facts alleged in the Operative Complaint and the PAGA Notice to the LWDA that accrued during the PAGA Period (collectively “Released PAGA Claims”). Aggrieved Employees have no right or ability to exclude themselves from the release of the Released PAGA Claims.

6. **MOTION FOR PRELIMINARY APPROVAL**. Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 Plaintiff’s Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; and (v) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)). In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

1 6.2 Responsibilities of Counsel. Class Counsel will obtain a prompt hearing date for the
2 Motion for Preliminary Approval, file the Motion for Preliminary Approval no later than sixteen
3 (16) court days before the hearing, unless otherwise ordered by the Court, and deliver the Court's
4 Preliminary Approval Order to the Administrator.

5 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
6 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
12 otherwise satisfy the Court's concerns.

13 **7. SETTLEMENT ADMINISTRATION.**

14 7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action LLC to
15 serve as the Administrator and verified that, as a condition of appointment, the Administrator
16 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Administrator
19 other than a professional relationship arising out of prior experiences administering settlements.

20 7.2 Employer Identification Number. The Administrator shall have and use its own
21 Employer Identification Number for purposes of calculating payroll tax withholdings and
22 providing reports to state and federal tax authorities.

23 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
24 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
25 section 468B-1 for the funding of the GSA. Any interest that accrues on the GSA sums paid into
26 the QSF prior to distribution by the Administrator will become part of the NSA for distribution
27 to Participating Class Members.

28 7.4 Notice to Class Members.

1 7.4.1 No later than five (5) days after receipt of the Class Data, the Administrator shall
2 notify Class Counsel that the list has been received and state the number of Class Members,
3 Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

4 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen
5 (14) days after receiving the Class Data, the Administrator will send to all Class Members
6 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
7 Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit
8 A. The first page of the Class Notice shall prominently estimate the dollar amounts of any
9 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and
10 the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before
11 mailing Class Notices, the Administrator shall update Class Member addresses using the National
12 Change of Address database.

13 7.4.3 Not later than five (5) days after the Administrator’s receipt of any Class Notice
14 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
15 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
16 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
17 the most current address obtained. The Administrator has no obligation to make further attempts
18 to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a
19 second time.

20 7.4.4 The deadlines for Class Members’ written objections, challenges to Workweeks
21 and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days
22 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice
23 is re-mailed. The Administrator will inform the Class Member of the extended deadline with the
24 re-mailed Class Notice.

25 7.4.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise
26 discovers any persons who believe they should have been included in the Class Data and should
27 have received Class Notice, the Parties will expeditiously meet and confer in person or by
28 telephone, and in good faith in an effort to agree on whether to include them as Class Members.

1 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
2 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
3 requiring them to exercise options under this Agreement not later than fourteen (14) days after
4 receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

5 7.5 Requests for Exclusion (Opt-Outs).

6 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement
7 must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not
8 later than 45 days after the Administrator mails the Class Notice (plus an additional fourteen (14)
9 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
10 from a Class Member that reasonably communicates the Class Member's election to be excluded
11 from the Settlement and includes the Class Member's name, address and email address or
12 telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or
13 postmarked by the Response Deadline.

14 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails
15 to contain all the information specified in the Class Notice. The Administrator shall accept any
16 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
17 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
18 determination shall be final and not appealable or otherwise susceptible to challenge. If the
19 Administrator has reason to question the authenticity of a Request for Exclusion, the
20 Administrator may demand additional proof of the Class Member's identity. The Administrator's
21 determination of authenticity shall be final and not appealable or otherwise susceptible to
22 challenge.

23 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion
24 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
25 bound by all terms and conditions of the Settlement, including the Participating Class Members'
26 Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating
27 Class Member actually receives the Class Notice or objects to the Settlement.
28

1 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a
2 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
3 right to object to the class action components of the Settlement. Because future PAGA claims are
4 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who
5 are Aggrieved Employees are deemed to release the Released PAGA Claims identified in
6 Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7 7.6 Challenges to Calculation of Workweeks and Pay Periods. Each Class Member shall
8 have 45 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days
9 for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and
10 Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge
11 the allocation by communicating with the Administrator via fax, email or mail. The Administrator
12 must encourage the challenging Class Member to submit supporting documentation. In the
13 absence of any contrary documentation, the Administrator is entitled to presume that the
14 Workweeks and/or Pay Periods contained in the Class Notice are correct so long as they are
15 consistent with the Class Data. The Administrator's determination of each Class Member's
16 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
17 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the
18 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
19 Administrator's determination of the challenges.

20 7.7 Objections to Settlement.

21 7.7.1 Only Participating Class Members may object to the class action components of the
22 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
23 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
24 Payment and/or Class Representative Service Payment.

25 7.7.2 Participating Class Members may send written objections to the Administrator by
26 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
27 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
28 Participating Class Member who elects to send a written objection to the Administrator must do

so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish, maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement; Motion for Preliminary Approval; Preliminary Approval Order; Class Notice; Motion for Final Approval; Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment; the Final Approval Order; and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

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

1 of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and
2 objections received.

3 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to
4 address and make final decisions consistent with the terms of this Agreement on all Class Member
5 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision
6 shall be final and not appealable or otherwise susceptible to challenge.

7 7.8.5 Administrator's Declaration. Not later than fourteen (14) days before the date by
8 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
9 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
10 for filing in Court attesting to its due diligence and compliance with all of its obligations under
11 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
12 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
13 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
14 number of written objections and attach the Exclusion List. The Administrator will supplement
15 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
16 for filing the Administrator's declaration(s) in Court.

17 7.8.6 Final Report by Settlement Administrator. Within ten (10) days after the
18 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
19 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
20 identification number only of all payments made under this Agreement. At least fifteen (15) days
21 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
22 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
23 of all payments required under this Agreement. Class Counsel is responsible for filing the
24 Administrator's declaration in Court.

25 8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records,
26 Defendant represents that at the time of mediation there were 370 Class Members who
27 collectively worked a total of 15,055 Workweeks during the Class Period, and 194 Aggrieved
28 Employees who worked a total of 4,227 Pay Periods during the PAGA Period. If, on final

1 calculation, the total number of Workweeks is greater than 10% higher than 15,055 Workweeks
2 (i.e., greater than 16,560), Defendant may opt to (1) narrow the Class Period so that it is 16,560
3 Workweeks or less, or (2) increase the Gross Settlement Amount proportionally by the
4 Workweeks worked in excess of 16,560 Workweeks multiplied by the per Workweek value of
5 \$24.91. If this provision is triggered so as to increase the Gross Settlement Amount, the Parties
6 agree that the portion of the Gross Settlement Amount allocated to attorneys' fees will increase
7 proportionally such that the total amount of attorneys' fees remains one-third of the Gross
8 Settlement Amount after the upward adjustment required by this provision is implemented.

9 9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion
10 identified in the Exclusion List equals or exceeds 10% of the total of all Class Members,
11 Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree
12 that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect
13 whatsoever, and that neither Party will have any further obligation to perform under this
14 Agreement; provided, however, Defendant will remain responsible for paying all Settlement
15 Administration Expenses incurred to that point. Defendant must notify Class Counsel and the
16 Court of its election to withdraw not later than seven (7) days after the Administrator sends the
17 final Exclusion List to Defense Counsel; late elections will have no effect.

18 10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the
19 calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file in
20 Court, a Motion for Final Approval of the Settlement that includes a request for approval of the
21 PAGA settlement under Labor Code section 2699, subd. (l); a Proposed Final Approval Order;
22 and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts
23 of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
24 Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and
25 in good faith, to resolve any disagreements concerning the Motion for Final Approval.

26 10.1 **Response to Objections.** Each Party retains the right to respond to any objection raised
27 by a Participating Class Member, including the right to file responsive documents in Court no
28

1 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or
2 accepted by the Court.

3 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
4 Approval on any material change to the Settlement (including, but not limited to, the scope of
5 release to be granted by Class Members), the Parties will expeditiously work together in good
6 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
7 Approval. The Court's decision to award less than the amounts requested for the Class
8 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
9 Expenses Payment, and/or Administrator Costs Payment shall not constitute a material
10 modification to the Agreement within the meaning of this paragraph.

11 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
12 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
13 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
14 and (iii) addressing such post-Judgment matters as are permitted by law.

15 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
16 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
17 Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective
18 counsel, and all Participating Class Members who did not object to the Settlement as provided in
19 this Agreement, waive all rights to appeal from the Judgment, including all rights to post-
20 judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new
21 trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the
22 right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties'
23 obligations to perform under this Agreement will be suspended until such time as the appeal is
24 finally resolved and the Judgment becomes final, except as to matters that do not affect the amount
25 of the Net Settlement Amount.

26 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
27 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
28 modification of this Agreement (including, but not limited to, the scope of release to be granted

by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and Entry of Judgment, sharing, on a 50-50 basis, any additional Administration Costs reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. **ADDITIONAL PROVISIONS.**

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

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit

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

15 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and
16 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
17 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability
18 to communicate with Class Members in accordance with Class Counsel's ethical obligations
19 owed to Class Members.

20 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
21 together with its attached exhibits shall constitute the entire agreement between the Parties
22 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
23 inducements made to or by any Party.

24 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
25 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
26 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
27 its terms, and to execute any other documents reasonably required to effectuate the terms of this
28 Agreement including any amendments to this Agreement.

1 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
2 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
3 Settlement Agreement, submitting supplemental evidence and supplementing points and
4 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
5 or content of any document necessary to implement the Settlement, or on any modification of the
6 Agreement that may become necessary to implement the Settlement, the Parties will seek the
7 assistance of a mediator and/or the Court for resolution.

8 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
9 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
11 action, or right released and discharged by the Party in this Settlement.

12 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
13 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
14 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
15 Part 10, as amended) or otherwise.

16 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
17 modified, changed, or waived only by an express written instrument signed by all Parties or their
18 representatives, and approved by the Court.

19 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure
20 to the benefit of, the successors of each of the Parties.

21 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
22 governed by and interpreted according to the internal laws of the state of California, without
23 regard to conflict of law principles.

24 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
25 of this Agreement. This Agreement will not be construed against any Party on the basis that the
26 Party was the drafter or participated in the drafting.

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

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

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

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

To Plaintiff:

D.LAW, INC.
Emil Davtyan
Emil@d.law
David Yeremian
david@yeremianlaw.com
Enoch J. Kim
e.kim@d.law
Natalie Haritounian
n.haritounian@d.law
Jonas Agle
j.agle@d.law
450 N Brand Blvd., Ste 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

To Defendant:

DUGGAN MCHUGH LAW CORPORATION
Jennifer E. Duggan (SBN 183833)
jennifer@dugganmchugh.com
Katie A. Collins (SBN 309475)
katie@dugganmchugh.com
641 Fulton Ave., Suite 100

Sacramento, CA 95825
Telephone: (916) 550-5309

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

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

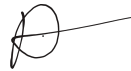
IT IS SO AGREED.

By the Parties:

DATED: _____

Plaintiff Tonya Dwyer

DATED: 01 / 30 / 2025



Defendant Pinsetters, Inc. dba Country Club Lanes

By: Dave Haness

Position: President

Sacramento, CA 95825
Telephone: (916) 550-5309

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

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

IT IS SO AGREED.

By the Parties:

DATED: 1/29/2025

Signed by:

E29438783F8C43B...

Plaintiff Tonya Dwyer

DATED: _____

Defendant Pinsetters, Inc. dba Country Club Lanes

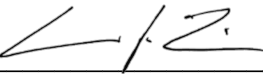
By: _____

Position: _____

1 Approved by counsel AS TO FORM ONLY:

2 DATED: January 28, 2025

D.LAW, INC.

3
4 By: _____

5 David Yeremian

6 Enoch J. Kim

Natalie Haritounian

7 Counsel for Plaintiff Tonya Dwyer

8
9
10 DATED: January 28, 2025

DUGGAN MCHUGH LAW CORPORATION

11
12 By: _____

13 Jennifer E. Duggan

14 Katie A. Collins

15 Attorneys for Defendant Pinsetters, Inc. dba Country
16 Club Lanes

EXHIBIT A

EXHIBIT A

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

Tonya Dwyer, et al. v. Pin Setters, Inc., et al., Case No. 24CV002452

The Superior Court for the State of California authorized this Notice. Read it carefully!

It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Pin Setters, Inc. dba Country Club Lanes ("Pin Setters") for alleged wage and hour violations. The Action is filed by former Pin Setters employee Tonya Dwyer ("Plaintiff") who alleges Pin Setters violated various provision of the California Labor Code and seeks (1) unpaid minimum and overtime wages, (2) meal and rest break premiums, (3) business expense reimbursements; and (4) statutory penalties and other relief for a class of non-exempt employees ("Class Members") who worked for Pin Setters during the Class Period (February 8, 2020 through January 18, 2025); and (2) civil penalties under the California Private Attorney General Act ("PAGA") for all non-exempt employees who worked for Pin Setters during the PAGA Period (February 8, 2023 through January 18, 2025) ("Aggrieved Employees"). Pin Setters denies Plaintiff's claims and denies any wrongdoing.

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

Based on Pin Setters' records, and the Parties' current estimates, your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Pin Setters' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Pin Setters' records showing that you worked [REDACTED] workweeks during the Class Period and you worked [REDACTED] pay periods during the PAGA Period. If you believe that you worked more workweeks or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment

that requires Pin Setters to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Pin Setters.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement. If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Pin Setters that are covered by this Settlement (Released Claims).

You Can Opt-Out of the Class Settlement but not the PAGA Settlement. The Opt-out Deadline is **DATE**. If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

You Cannot Opt-out of the PAGA Portion of the Proposed Settlement. Pin Setters must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement. Written objections must be submitted by **DATE**. All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff. Other than the PAGA portion of this Settlement, you can object to any aspect of this Settlement. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing. The Court's Final Approval Hearing is scheduled to take place on **DATE**. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Workweeks and Pay Periods. Written challenges must be submitted by **DATE**. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of workweeks and pay periods you worked according to Pin Setters' records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by **DATE**. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Pin Setters employee. The Action accuses Pin Setters of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest break premium wages; failing to provide meal and rest breaks; issuing inaccurate wage statements; failing to pay wages due upon termination; and failing to reimburse necessary business expenses. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by D.Law, Inc. (“Class Counsel”) in the Action.

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

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

So far, the Court has made no determination whether Pin Setters violated any laws. In the meantime, Plaintiff and Pin Setters hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Pin Setters have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Pin Setters does not admit any violations or concede the merit of any claims.

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

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

Pin Setters Will Pay \$375,000.00 as the Gross Settlement Amount (Gross Settlement). Pin Setters has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Pin Setters will fund the Gross Settlement within 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

- Up to \$125,000.00 (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to \$7,500.00 as a Class Representative Service Payment to Plaintiff for filing the Action, working with Class Counsel and representing the Class. The Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payments and any Individual PAGA Payments.
- Up to \$8,750.00 to the Administrator for services administering the Settlement.
- Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their pay periods worked during the PAGA Period.

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

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their workweeks worked during the Class Period.

Taxes Owed on Payments to Class Members. Plaintiff and Pin Setters are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages ("Wage Portion") and 90% to penalties and interest ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Pin Setters will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the payment represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from you or your representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the

Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Pin Setters.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Pin Setters based on the PAGA Period facts alleged in the Action.

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

Administrator. The Court has appointed a neutral company, Apex Class Action LLC (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

Participating Class Members’ Release. After the Judgment is final and Pin Setters has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Pin Setters or related entities for wages based on the Class Period facts and PAGA penalties based on the facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members’ Release states: “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 alleged or which could have reasonably been alleged based on the facts in the Operative Complaint that arose during the Class Period (collectively “Released Class Claims”). 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.”

Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Pin Setters has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Pin Setters, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Pin Setters or its related entities based on the facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Release states: "All 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 civil penalties that are alleged or which reasonably could have been alleged based on the facts alleged in the Operative Complaint and the PAGA Notice to the LWDA that accrued during the PAGA Period (collectively "Released PAGA Claims"). Aggrieved Employees have no right or ability to exclude themselves from the release of the Released PAGA Claims."

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

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

Workweek Challenges. The number of Workweeks you worked during the Class Period and the number of Pay Periods you worked during the PAGA Period, as recorded in Pin Setters' records, are stated in the first page of this Notice. You have until **DATE** to challenge the number of Workweeks and Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Dwyer v. Pin Setters, Inc.*, and include your identifying information (full name, address, and email address or telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by **DATE**, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Agreement or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is **DATE**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Dwyer v. Pin Setters, Inc.*, and include your name, current address, telephone number, and approximate dates of employment with Pin Setters and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department 23 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814. At the Hearing, the Court will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and the

Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website (<https://www.saccourt.ca.gov/default.aspx>) for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Pin Setters and Plaintiff have promised to do under the proposed Settlement. If you have questions or would like additional information, you can telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.saccourt.ca.gov/default.aspx>) and entering the Case Number for the Action, *Dwyer v. Pin Setters, Inc., et al.*, Case No. 24CV002452.

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

Class Counsel:

D.LAW, INC.
Emil Davtyan
emil@d.law
David Yeremian
d.yeremian@d.law
Natalie Haritoonian
n.haritoonian@d.law
Jonas Agle
j.agle@d.law
Enoch J. Kim
e.kim@d.law
450 N. Brand Blvd., Ste. 840
Glendale, CA 91203
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Settlement Administrator: Apex Class Action LLC

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2

February 8, 2024

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

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

Pin Setters, Inc., doing business as Country Club Lanes
2600 Watt Avenue
Sacramento, CA 95821
Certified Mail Tracking Number: 9414 8112 0620 4921 8072 43

Dave Haness, Registered Agent
Pin Setters, Inc., doing business as Country Club Lanes
2600 Watt Avenue
Sacramento, CA 95821
Certified Mail Tracking Number: 9414 8112 0620 4921 3386 24

LWDA No.: LWDA-CM-1009966-24

**Re: Labor Code § 2698, et seq. Penalties – PAGA Notice Letter to the LWDA
Tonya Dwyer v. Pin Setters, Inc., doing business as Country Club Lanes, et al.
Superior Court for the County of Sacramento**

Gentlepersons:

This office represents Plaintiff Tonya Dwyer (“Plaintiff”) and other similarly situated aggrieved non-exempt, hourly employees aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226(b), 226.3, 226.7, 351, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, et seq. and 2802; 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 himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Pin Setters, Inc., a California corporation, doing business as Country Club Lanes, a ; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).



Additionally, 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 Sacramento County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

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.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee based out of Defendants' location in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees." Aggrieved Employees consistently worked at Defendants' behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, unlawfully rounding to their detriment, failing to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay for overtime pay, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse for necessary business expenses all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of 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. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Specifically, Aggrieved Employees were required to arrive to work several minutes in advance of their scheduled start times to assist customers and coworkers, and they were not paid for this time. Additionally, Defendants instructed Aggrieved Employees to clock out and continue working



after the end of their scheduled shifts. Furthermore, Defendants frequently contacted Aggrieved Employees on their personal cell phones with work demands outside of scheduled work hours, and Aggrieved Employees were not compensated for this time. Defendants also required Aggrieved Employees to clock out for their scheduled meal periods but continue working, and Aggrieved Employees were not paid for this time.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30- minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendants failed to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary cash awards, bonuses, and/or shift differential pay paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay for overtime.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work, unlawful rounding by Defendants, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding and requirements to work off the, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands.



Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks and this resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide 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. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also 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 (1) hour's wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, 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; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees do not accurately list the total number of hours worked. Thus, the wage statements do not comply with Labor Code § 226(a)(2). Additionally, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported due to off the clock work. Moreover, the wage statements given to Aggrieved Employees failed to non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above,



at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Plaintiff did not receive her final pay until eleven days after her termination. Moreover, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay for overtime. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing his required job duties for Defendants including for cell phone expenses. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

Defendants also violated California Labor Code § 351 when Defendants and its agents collected, took, and received gratuity that was paid, given to, or left for an Aggrieved Employee by a patron. To wit, Defendant's agents took a share of the tips from the bar even when they did minimal work there.

Defendants also failed to provide suitable seating to Aggrieved Employees. The operations at Defendant's facilities allowed for the presence and use of a stool or seat by Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

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.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs



2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants’ unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

During the course of 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. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants’ control. Specifically, Aggrieved Employees were required to arrive to work several minutes in advance of their scheduled start times to assist customers and coworkers, and they were not paid for this time. Additionally, Defendants instructed Aggrieved Employees to clock out and continue working after the end of their scheduled shifts. Furthermore, Defendants frequently contacted Aggrieved Employees on their personal cell phones with work demands outside of scheduled work hours, and Aggrieved Employees were not compensated for this time. Defendants also required Aggrieved Employees to clock out for their scheduled meal periods but continue working, and Aggrieved Employees were not paid for this time.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendants failed to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage



Orders under California law, Defendants did not incorporate these non-discretionary cash awards, bonuses, and/or shift differential pay paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay for overtime.

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 Plaintiff and the 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 and double time. 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.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. 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 512 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, 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.

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, including by miscalculating any premium payments they did make. 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 hour of wages at their correctly calculated regular rate of compensation 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. Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

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 Under Labor Code § 226.7 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, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. 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 correctly calculated regular rate of compensation for each rest 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 and Itemized 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 accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Any wage statements given to Employees by Defendants necessarily failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked or at the correct rate of pay and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226€ 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, ..."



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

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, 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.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, unlawful rounding, and the failure to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate used to calculate and pay for overtime, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 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).



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, double time, premium pay, etc., and by not recording meal period start and end times, 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).

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 Reimburse for Necessary Business Expenditures in Violation of Labor Code §



2802

Defendants have regularly required Plaintiff to incur business expenses in the course of performing his required job duties for Defendants including for cell phone expenses and mileage. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

Defendants systematically and 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).

Illegal Taking of Gratuity Under Labor Code § 351

Defendants, and their agents, have regularly taken money given to employees as tips and gratuity for themselves rather than properly pooling or disbursing the money to employees. Under Labor Code § 351, it is illegal for employers to take, receive, or otherwise possess any portion of tips that were paid, given to, or left for employees. Defendants systematically collected gratuities specifically meant for employees thereby depriving employees of earned tips. Defendants are liable for PAGA Penalties resulting from their failure to properly disburse all tips to employees. Plaintiff is 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.

Failure to Provide Suitable Seating

Plaintiff also alleges that operations at Defendants' facilities allowed for the presence and use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. California Labor Code § 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.



In violation of the applicable sections of the California Labor Code and the requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that Defendants did not provide suitable seating and did not allow them to sit when it did not interfere with the performance of their duties.

With their conduct, Defendants have violated California Labor Code § 1198 and Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Aggrieved Employees. Defendants have violated the California Labor Code, including Section 1198, and regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable IWC Wage Orders.

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

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Plaintiff and 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, 210, 226, 226(b), 226.3, 226.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq.* and 2802, 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 wage statements or 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) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 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 §§ 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) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the 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



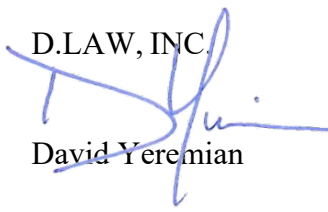
would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

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 Pin Setters, Inc., doing business as Country Club Lanes, 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.



David Yermenian

Cc: Pin Setters, Inc., doing business as Country Club Lanes; by Certified Mail

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Natalie Haritounian (SBN 324318)
n.haritounian@d.law
Jonas Agle (SBN 352712)
j.agle@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff TONYA DWYER,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

TONYA DWYER, an individual on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

PIN SETTERS, INC., a California
corporation doing business as COUNTRY
CLUB LANES; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203;
7. Violation of Labor Code § 204;
8. Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5;
9. Failure to Reimburse Necessary Business Expenses § 2802; and
10. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff TONYA DWYER (“Plaintiff”) brings this action on behalf of herself and
3 the Class Members who are defined as “all current and former employees within the State of
4 California who, at any time from four (4) years prior to the filing of this lawsuit, are or were
5 employed as non-exempt hourly employees by Defendants PIN SETTERS, INC., a California
6 corporation doing business as COUNTRY CLUB LANES, a ; and DOES 1 through 50” (all
7 defendants being collectively referred to herein as “Defendants”).

8 2. Plaintiff alleges that Defendants, and each of them, violated various provisions of
9 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC), and the
10 California Business & Professions Code, and seeks redress for these violations.

11 3. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
12 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
13 endured similar violations at the hands of Defendants as the other Class Members who served in
14 similar and related positions.

15 **THE PARTIES**

16 **A. The Plaintiff**

17 4. Plaintiff TONYA DWYER resides in California, during the time period relevant to
18 this Complaint, was employed by Defendants as a non-exempt hourly employee within the State
19 of California.

20 **B. The Defendants**

21 5. Defendant PIN SETTERS, INC., doing business as COUNTRY CLUB LANES is a
22 California corporation and is registered with the California Secretary of State. Defendant PIN
23 SETTERS, INC., doing business as COUNTRY CLUB LANES has been the employer listed on
24 the wage statements and employment records issued to Plaintiff during the relevant time period
25 that Plaintiff was employed with Defendants.

26 6. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
28 unknown to Plaintiff, who therefore sue these Defendants by such fictitious names under Code of

1 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
2 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
3 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
4 this Complaint to reflect the true names and capacities of the Defendants designated herein as
5 Does 1 through 50 when their identities become known.

6 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
8 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
9 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
10 all respects as the employers or joint employers of Class Members. Defendants, and each of them,
11 exercised control over the wages, hours or working conditions of Class Members, or suffered or
12 permitted Class Members to work, or engaged, thereby creating a common law employment
13 relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly
14 employed Class Members.

15 8. Whenever and wherever reference is made in this Complaint to any act by a
16 defendant or defendants, such allegations and references shall also be deemed to mean the acts and
17 failures to act of each defendant acting individually, jointly, and severally.

18 9. Whenever and wherever reference is made to individuals who are not named as a
19 Defendant in this Complaint but were agents, servants, employees and/or supervisors of
20 Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope
21 of their employment.

22 **JURISDICTION AND VENUE**

23 10. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
25 as a Class Action on behalf of similarly situated Class Members of Defendants pursuant to
26 California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial
27 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
28 the obligations and liabilities giving rise to this lawsuit occurred in part in Sacramento County.

Defendants maintain and operate facilities in Sacramento County and employs Plaintiff and other Class Members in Sacramento County, while doing business throughout California.

FACTUAL BACKGROUND

11. Class Members consistently worked at Defendants behest without being paid all wages due. Class Members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Class Members all wages due and owing, including by requiring off the clock work, unlawfully rounding to their detriment, failing to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay for overtime pay, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse necessary business expenses all in violation of various provisions of the California Labor Code and applicable Wage Orders.

12. During the course of Class Members' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Defendants required Class Members to perform pre-shift and post-shift off the clock work. For instance, at the beginning of Class Members' shift, they were required arrive to work several minutes in advance of their scheduled start times to assist customers and coworkers, and they were not paid for this time. Additionally, Defendants instructed Class Members to clock out and continue working after the end of their scheduled shifts. Furthermore, Defendants frequently contacted Class Members on their personal cell phones with work demands outside of scheduled work hours, and Class Members were not compensated for this time. Defendants also required Class Members to clock out for their scheduled meal periods but continue working, and Class Members were not paid for this time.

13. Defendants also failed to pay Class Members all wages due and owing because Defendants failed to incorporate non-discretionary, performance-based cash awards, bonuses, and/or shift differential pay into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-

1 discretionary cash awards, bonuses, and/or shift differential pay paid to the Class Members into
2 the regular rate of pay Defendants used to calculate and pay for overtime.

3 14. Moreover, Defendants had a consistent policy and practice of unlawfully rounding
4 hours worked to the detriment of the Class Members. Rather than paying Class Members for all
5 hours and minutes they actually worked, Defendants followed a uniform policy and practice of
6 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or
7 30-minute time increment), and generally did so to the detriment of the Class Members, and
8 Plaintiff contend this policy is not neutral and resulted, over time, to the detriment of the Class
9 Members by systematically under-compensating them. Rather than reflecting the actual hours
10 worked by Class Members, the time entries were rounded and reduced to reflect the scheduled
11 work time rather than the actual hours worked. These unlawfully rounded time entries were
12 inputted into Defendants' payroll system from which wage statements and payroll checks were
13 created.

14 15. By implementing policies, programs, practices, procedures and protocols which
15 resulted in off the clock work, unlawful rounding, and the failure to incorporate non-discretionary
16 cash awards, bonuses, and/or shift differential pay into the regular rate of pay, Defendants' willful
17 actions resulted in the systematic underpayment of wages to Class Members, including
18 underpayment of overtime pay to Class Members over the relevant time period. For example, the
19 above described off the clock work addressed above caused Plaintiff to begin receiving overtime
20 pay later than they should have.

21 16. As a result of the above described requirements to work off the clock, unlawful
22 rounding by Defendants, the failure to incorporate non-discretionary cash awards, bonuses, and/or
23 shift differential pay into the regular rate of pay, and the other wage violations they endured at
24 Defendants' hands, Class Members were not properly paid all wages earned and all wages owed to
25 them by Defendants, including when working more than eight (8) hours in any given day and/or
26 more than forty (40) hours in any given week.

27 17. As a result of Defendants' unlawful policies and practices, Class Members incurred
28 overtime hours worked for which they were not adequately and completely compensated, in

1 addition to the hours they were required to work off the clock. To the extent applicable,
2 Defendants also failed to pay Class Members at an overtime rate of 1.5 times the regular rate for
3 the first eight hours of the seventh consecutive work day in a week and overtime payments at the
4 rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work
5 day, as required under the Labor Code and applicable IWC Wage Orders.

6 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and
7 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
8 Members for all hours worked, and failing to pay minimum wages for all time worked, as required
9 by California law. Defendants thus failed to pay Class Members at least minimum wages for all
10 the time they worked for Defendants in violation of the Labor Code and applicable IWC Wage
11 Orders as the actual times when Class Members were under the control and direction of
12 Defendants was under reported in the hours reflected on the timekeeping records. Furthermore,
13 Defendants' willful actions resulted in the systematic underpayment of wages to Class Members,
14 including underpayment of overtime pay to Class Members over a period of time.

15 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
16 continuing to the present, Defendants had a consistent policy or practice of failing to pay Class
17 Members for all hours worked. Also, from at least four (4) years prior to the filing of this lawsuit
18 and continuing to the present, Defendants also had a consistent policy or practice of failing to pay
19 Class Members their true and correct overtime compensation at premium overtime rates for all
20 hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time
21 rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510
22 and the corresponding sections of IWC Wage Orders.

23 20. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
24 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
25 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
26 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
27 without receiving a lawful and timely meal break. In addition to untimely meal periods,
28 Defendants also required Class Members to respond to work demands. Defendants placed their

1 needs over Class Members lawful meal and rest breaks and this resulted in Class Members often
2 having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened
3 ones, because the demands of the job would not avail them the opportunity to take a lawfully
4 uninterrupted and off duty meal and/or rest break.

5 21. On the occasions when Class Members worked over 10 hours in a shift, Defendants
6 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
7 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid
8 meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by
9 Defendants' business records, or lack thereof. Defendants also failed to pay Class Members
10 "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for
11 each meal period or rest break that Defendants failed to provide or deficiently provided.

12 22. Therefore, for at least four years prior to the filing of this action and through to the
13 present, Defendants have regularly required Class Members to work shifts in excess of five (5)
14 hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes,
15 and shifts in excess of (10) hours without providing them with second meal periods of not less
16 than thirty minutes; nor did Defendants pay Class Members "premium pay," i.e. one hour of
17 wages at each Class Member's effective hourly rate of pay, for each meal period that Defendants
18 failed to provide or deficiently provided.

19 23. Meal period violations thus occurred in one or more of the following manners:

- 20 (a) Class Members were not provided full thirty-minute duty free meal periods
21 for work days in excess of five (5) hours and were not compensated one (1)
22 hour's wages in lieu thereof, all in violation of, among others, Labor Code
23 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
24 Order(s);
- 25 (b) Class Members were not provided second full thirty-minute duty free meal
26 periods for work days in excess of ten (10) hours;
- 27 (c) Class Members were required to work through at least part of their daily
28 meal period(s);

- 1 (d) Meal periods were provided after five (5) hours of continuous work during
2 a shift; and
3 (e) Class Members were restricted in their ability to take a full thirty-minute
4 meal period.

5 24. Class Members were also not authorized and permitted to take lawful rest periods,
6 were systematically required by Defendants to work through or during breaks and were not
7 provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability
8 to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest
9 periods. Therefore, from at least four years prior to the filing of this lawsuit and continuing to the
10 present, Defendants have consistently failed to provide Class Members with paid rest breaks of not
11 less than ten minutes for every work period of four or more consecutive hours; or major fraction
12 thereof, nor did Defendant pay Class Members premium pay for each day on which requisite rest
13 breaks were not provided or were deficiently provided.

14 25. Rest period violations therefore arose in one or more of the following manners:

- 15 (a) Class Members were required to work without being provided a minimum
16 ten (10) minute rest period for every four (4) hours or major fraction
17 thereof worked and were not compensated one (1) hour of pay at their
18 regular rate of compensation for each workday that a rest period was not
19 provided;
20 (b) Class Members were not authorized and permitted to take timely rest
21 periods for every four hours worked, or major fraction thereof; and
22 (c) Class Members were required to remain on-duty during rest periods or
23 otherwise had their rest periods interrupted by work demands.

24 26. Defendants also consistently failed to issue accurate itemized wage statements as
25 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members do
26 not accurately list the total number of hours worked. Thus, the wage statements do not comply
27 with Labor Code § 226(a)(2). Additionally, the wage statements given to Class Members failed to
28 accurately account for unpaid wages and overtime because Defendants had unlawfully rounded

1 time entries to the detriment of the Class Members and their actual hours worked were under-
2 reported due to off the clock work. Moreover, the wage statements given to Class Members failed
3 to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular
4 rate of pay used to calculate and pay overtime compensation. Additionally, the wage statements
5 given to Class Members failed to accurately account for premium pay for deficiently provided
6 meal periods and rest breaks.

7 27. From at least four (4) years prior to filing this lawsuit and continuing to the present,
8 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class
9 Members at the time of their termination of within seventy-two (72) hours of their resignation, as
10 required by California wage-and-hour laws. Specifically, Plaintiff did not receive her final pay
11 until eleven days after her termination. Moreover, Class Members were not paid all regular and
12 overtime wages because Defendants failed to pay for all hours worked, required off the clock
13 work, unlawfully rounded time entries to the detriment of Class Members, and failed to
14 incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular
15 rate of pay used to calculate and pay for overtime. Additionally, Defendants failed to pay premium
16 wages owed for unprovided meal periods and rest periods, as further detailed in this Complaint.
17 Defendants' failure to pay said wages within the required time was willful within the meaning of
18 Labor Code § 203.

19 28. Additionally, from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants have regularly required Class Members to incur business
21 expenses in the course of performing their required job duties for Defendants including for cell
22 phone expenses. Upon information and belief, Class Members incurred similar costs. These
23 expenses incurred by Class Members were necessary and required of them in performing their
24 assigned job duties, but Defendants failed to reimburse Class Members for all such necessary
25 expenditures, thus entitling them to reimbursement according to proof as required under Labor
26 Code § 2802 and the applicable provisions of the IWC Wage Orders.

27 29. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
28 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248, 510, 512, 558,

558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802 and California Code of Regulations, Title 8, section 11000 *et seq.*

30. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class Members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

31. Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class Members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class Members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Class Member's regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class Members who were subject to Defendants' policy and/or practice of failing to authorize and permit Class Members to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Class Member's regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class Members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Termination Pay Subclass. All Class Members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

g. Subclass 7: Failure to Timely Pay Wages Twice Monthly Subclass. All Class

Members who were subject to Defendants' policy and practice of not timely paying all wages earned when they were due and payable at least twice monthly.

h. Subclass 8. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

i. Subclass 9. Expense Reimbursement Subclass. All Class Members who incurred necessary and reasonable expenses in connection with performing their job duties for Defendant and who were subject to a policy and/or practice under which such expenses were not reimbursed.

j. Subclass 10. UCL Subclass. All Class Members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class against Defendants, the Class Period should be adjusted accordingly.

33. Defendants, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for the time worked by Class Members, even though Defendants enjoyed the benefit of this work, required Class Members to perform this work and permitted or suffered to permit this work. Defendants have uniformly denied these Class Members wages to which these employees are entitled and failed to provide meal periods or authorize and permit rest periods, in order to unfairly cheat the competition and unlawfully profit.

34. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

///

1 **A. Numerosity**

2 35. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of class member has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit, hundreds of employees who satisfy the Class definition within
6 the State of California.

7 36. Accounting for employee turnover during the relevant time period increases this
8 number substantially. Plaintiff alleges that Defendants' employment records will provide
9 information as to the number and location of all Class Members.

10 **B. Commonality**

11 37. There are questions of law and fact common to the Class that predominates over
12 any questions affecting only individual Class Members. These common questions of law and fact
13 include:

- 14 a. Whether Defendants failed to pay Class Members minimum wages;
- 15 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 16 c. Whether Defendants failed to pay Class Members overtime as required under Labor
17 Code § 510;
- 18 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
19 IWC Wage Orders, by failing to provide Class Members with requisite meal
20 periods or premium pay in lieu thereof;
- 21 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
22 Orders, by failing to authorize and permit Class Members to take requisite rest
23 breaks or provide premium pay in lieu thereof;
- 24 f. Whether Defendants violated Labor Code § 226(a) by providing Class Members
25 with inaccurate wage statements;
- 26 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
27 wages and compensation due and owing at the time of termination of employment;
- 28 h. Whether Defendants' conduct was willful;

- i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class Members' earned wages and work periods;
- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class Members during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all necessary business expenses Defendants required them to incur in performing their job duties;
- m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- n. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

38. The claims of the named plaintiff is typical of those of Class Members. The Class Members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

39. Plaintiff will fairly and adequately represent and protect the interest of the Class Members. Counsel who represents Class Members are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

40. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to all Class Members predominate over any questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Class Members

1 properly.

2 41. As to the issues raised in this case, a class action is superior to all other methods for
3 the fair and efficient adjudication of this controversy, as joinder of all Class Members is
4 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
5 Members. Further, as the economic or other loss suffered by vast numbers of Class Members may
6 be relatively small, the expense and burden of individual actions makes it difficult for the Class
7 Members to individually redress the wrongs they have suffered. Moreover, in the event
8 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
9 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
10 managing this case as a class action, and proceeding on a class-wide basis will permit Class
11 Members to vindicate their rights for violations they endured which they would otherwise be
12 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
13 them.

14 42. Class action treatment will allow those persons similarly situated to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
17 Plaintiff contemplates the eventual issuance of notice to the proposed Class Members that would
18 set forth the subject and nature of the instant action. The Defendants' own business records can be
19 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
20 that any further notice is required additional media and/or mailings can be used.

21 43. Defendants, as prospective and actual employers of the Class Members, had a
22 special fiduciary duty to disclose to prospective Class Members the true facts surrounding
23 Defendants' pay practices, policies and working conditions imposed upon Class Members as well
24 as the effect of any alleged arbitration agreements that may have been forced upon them. In
25 addition, Defendants knew they possessed special knowledge about pay practices and policies,
26 most notably intentionally refusing to pay for all hours actually worked which should have been
27 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
28 and policies and practices on Class Members.

1 44. Class Members did not discover the fact that they were entitled to all pay under the
2 Labor Code until shortly before the filing of this lawsuit nor was there ever any discussion about
3 Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury, right to collectively
4 organize and oppose unlawful pay practices under California law as well as obtain injunctive relief
5 preventing such practices from continuing. As a result, the applicable statutes of limitation were
6 tolled until such time as Plaintiff and the Class Members discovered their claims.

7 **FIRST CAUSE OF ACTION**
8 **FAILURE TO PAY MINIMUM WAGES**
9 **(Against All Defendants)**

10 45. Plaintiff re-alleges and incorporate all preceding paragraphs, as though set forth in
11 full herein.

12 46. Defendants failed to pay Class Members minimum wages for all hours worked.
13 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
14 Class Members for all hours worked. Class Members would work hours and not receive wages,
15 including as alleged above in connection with off the clock work and unlawful rounding of hours.
16 Additionally, Defendants failed to incorporate non-discretionary cash awards, bonuses, and/or
17 shift differential pay into the regular rate of pay used to calculate and pay overtime. Defendants,
18 and each of them, have intentionally and improperly changed, adjusted and/or modified the hours
19 of Class Members, which resulted in off the clock work and underpayment of all wages owed to
20 Class Members over a period of time, while benefiting Defendants. During the relevant time
21 period, Defendants thus regularly failed to pay minimum wages to Class Members, to their
22 detriment. Additionally, Defendants had a consistent policy of failing to pay Class Members for
23 hours worked during alleged meal and rest periods for which Class Members were consistently
24 denied, as also addressed herein. Defendants' uniform pattern of unlawful wage and hour practices
25 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
26 uniform policy and practice that denied accurate compensation to Class Members as to minimum
27 wage pay.

28 47. In California, employees must be paid at least the then applicable state minimum

1 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
2 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
3 timely pay its employees for all hours worked. Defendants failed to do so.

4 48. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:
5 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
6 employees, and the payment of a less wage than the minimum so fixed is unlawful.”

7 49. The applicable minimum wages fixed by the commission for work during the
8 relevant period is found in Paragraph 4(A)-4(D) of the IWC Wage Orders.

9 50. The minimum wage provisions of California Labor Code are enforceable by private
10 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
11 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
12 overtime compensation applicable to the employee is entitled to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage or overtime compensation, including
14 interest thereon, reasonable attorney’s fees and costs of suit.”

15 51. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
16 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
17 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
18 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
19 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
20 be used as a credit against a minimum wage obligation.

21 52. In committing these violations of the California Labor Code, Defendants
22 inaccurately recorded, or required Class Members to input times that did not reflect their actual
23 hours worked, or calculated the correct time worked and consequently underpaid the actual time
24 worked by Class Members. Defendants acted in an illegal attempt to avoid the payment of all
25 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
26 Commission requirements and other applicable laws and regulations. As a result of these
27 violations, Defendant also failed to timely pay all wages earned in accordance with California
28 Labor Code § 1194.

53. California Labor Code § 1194.2 also provides for the following remedies: “In any action under Section 1194 . . . to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

54. In addition to restitution for all unpaid wages, pursuant to California Labor Code § 1197.1, Class Members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

55. Pursuant to California Labor Code § 1194.2, Class Members are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

56. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

57. Wherefore, Class Members 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 members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

59. California Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
2 may be maintained directly against the employer in an employee's name without first filing a
3 claim with the Division of Labor Standards and Enforcement.

4 60. By their conduct, as set forth herein, Defendants violated California Labor Code §
5 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
6 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
7 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
8 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
9 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
10 eight (8) hours on any seventh day of work in a workweek.

11 61. Defendants had a consistent policy of not paying Class Members wages for all
12 hours worked, including by requiring off the clock work and by unlawfully rounding down actual
13 hours worked as addressed above. Additionally, Defendants failed to incorporate non-
14 discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to
15 calculate and pay overtime. Defendants, and each of them, have intentionally and improperly
16 rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, in
17 order to avoid paying Class Members all earned and owed straight time and overtime wages and
18 other benefits, in violation of the California Labor Code, the California Code of Regulations and
19 the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and
20 Enforcement. Defendants have also violated these provisions by requiring Class Members to work
21 through portions of their meal period. Therefore, Class Members were not properly compensated,
22 nor were they paid overtime rates for hours worked in excess of eight hours in a given day, and/or
23 forty hours in a given week. Based on information and belief, Defendants did not make available
24 to Class Members a reasonable protocol for correcting time records when Class Members worked
25 overtime hours or to fix incorrect time entries or those that Defendants unlawfully rounded to the
26 Class Members' detriment.

27 62. Defendants' failure to pay Class Members the unpaid balance of regular wages
28 owed and overtime compensation, as required by California law, violates the provisions of Labor

1 Code §§ 510 and 1198, and is therefore unlawful.

2 63. Additionally, Labor Code § 558(a) provides “any employer or other person acting
3 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
5 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
6 pay period for which the employee was underpaid in addition to an amount sufficient to recover
7 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
8 underpaid employee for each pay period for which the employee was underpaid in addition to an
9 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
10 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
11 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
12 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
13 Wage Orders. Accordingly, Plaintiff and the Class Members seek the remedies set forth in Labor
14 Code § 558.

15 64. Defendants’ failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid
17 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
18 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
19 and overtime compensation earned by Class Members. Each such failure to make a timely
20 payment of compensation to Class Members constitutes a separate violation of California Labor
21 Code § 204.

22 65. Class Members have been damaged by these violations of California Labor Code
23 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

24 66. Consequently, pursuant to the California Labor Code, including Labor Code §§
25 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
26 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
27 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the
28 assessment of any statutory penalties against Defendants, and each of them, and any additional

1 sums as provided by the Labor Code and/or other statutes.

2 **THIRD CAUSE OF ACTION**

3 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

4 **(Against All Defendants)**

5 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 68. Class Members regularly worked shifts greater than five (5) hours and in some
8 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
9 someone for a shift of more than five (5) hours without providing him or her with a meal period of
10 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
11 her with a second meal period of not less than thirty (30) minutes.

12 69. Defendants failed to provide Class Members with meal periods as required under
13 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
14 resulted in Class Members consistently having to work through their scheduled meal breaks
15 because the demands of the job would not avail them the opportunity to take a lawfully
16 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
17 when Class Members worked more than ten (10) hours in a given shift, they did so without
18 receiving a second uninterrupted thirty (30) minute meal period as required by law.

19 70. Defendants thus failed to provide Class Members with meal periods as required by
20 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
21 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
22 during breaks.

23 71. Moreover, Defendants failed to compensate Class Members for each meal period
24 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of
25 the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
26 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
27 pay at the employee's regular rate of compensation for each workday that the meal period is not
28 provided. Defendants failed to compensate Class Members for each meal period not provided or

1 inadequately provided, as required under Labor Code § 226.7.

2 72. Therefore, pursuant to Labor Code § 226.7 and the applicable IWC Wage Order,
3 paragraph 11, Class Members are entitled to damages in an amount equal to one (1) hour of wages
4 at their effective hourly rates of pay for each meal period not provided or deficiently provided, a
5 sum to be proven at trial, as well as the assessment of any statutory penalties against the
6 Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

7 **FOURTH CAUSE OF ACTION**

8 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

9 **(Against All Defendants)**

10 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 74. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
13 provide that employers must authorize and permit all employees to take rest periods at the rate of
14 ten (10) minutes net rest time per four (4) work hours.

15 75. Class Members consistently worked consecutive four (4) hour shifts and were
16 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
17 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC
18 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
19 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
20 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
21 placed their needs over Class Members lawful rest breaks and this resulted in Class Members
22 consistently having to work through their scheduled rest breaks because the demands of the job
23 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
24 Thus, Class Members were consistently denied of their rest breaks.

25 76. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
26 provide that if an employer fails to provide an employee rest period in accordance with this
27 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
28 compensation for each workday that the rest period is not provided.

1 77. Defendants, and each of them, have therefore intentionally and improperly denied
2 rest periods to Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of
3 the applicable IWC Wage Orders.

4 78. Defendants failed to authorize and permit Class Members to take rest periods, as
5 required by the Labor Code. Moreover, Defendants did not compensate Class Members with an
6 additional hour of pay at each Class Member's effective hourly rate for each day that Defendants
7 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

8 79. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
9 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
10 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
11 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
12 of them, in a sum as provided by the Labor Code and/or other statutes.

13 **FIFTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226(a)**
15 **(Against All Defendants)**

16 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 81. California Labor Code § 226(a) requires an employer to furnish each of his or her
19 employees with an accurate, itemized statement in writing showing the gross and net earnings,
20 total hours worked, and the corresponding number of hours worked at each hourly rate; these
21 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
22 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
23 statements may be given to the employee separately from the payment of wages; in either case the
24 employer must give the employee these statements twice a month or each time wages are paid.

25 82. Defendants failed to provide Class Members with accurate itemized wage
26 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
27 Class Members do not accurately list the total number of hours worked. Thus, the wage statements
28 do not comply with Labor Code § 226(a)(2). Additionally, the wage statements given to Class

1 Members failed to accurately account for unpaid wages and overtime because Defendants had
2 unlawfully rounded time entries to the detriment of the Class Members and their actual hours
3 worked were under-reported due to off the clock work. Moreover, the wage statements given to
4 Class Members failed to incorporate non-discretionary cash awards, bonuses, and/or shift
5 differential pay into the regular rate of pay used to calculate and pay overtime compensation.
6 Additionally, the wage statements given to Class Members failed to accurately account for
7 premium pay for deficiently provided meal periods and rest breaks.

8 83. Throughout the liability period, Defendants intentionally failed to furnish to Class
9 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages
10 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
11 applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
12 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
13 only the last four digits of his or her social security number or an employee identification number
14 other than a social security number, (8) the name and address of the legal entity that is the
15 employer and (9) all applicable hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226,
17 amongst other statutory requirements. Defendants knowingly and intentionally failed to provide
18 Class Members with such timely and accurate wage and hour statements.

19 84. Class Members suffered injury as a result of Defendants' knowing and intentional
20 failure to provide them with the accurate wage and hour statements as required by law and are
21 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
22 Defendants have failed to provide wage statements with accurate and complete information as
23 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
24 Members cannot promptly and easily determine from the wage statement alone one or more of the
25 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
26 period or any of the other information required to be provided on the itemized wage statement
27 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
28 employer made from gross wages to determine the net wages paid to the employee during the pay

period, (iii) The name and address of the employer and, (iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number. For purposes of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be able to readily ascertain the information without reference to other documents or information.

85. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Class Members 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.

86. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC Wage Order, paragraph 7(B), Class Members 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.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

88. Numerous Class Members are no longer employed by Defendants; they either quit Defendants’ employ or were fired therefrom.

89. Defendants failed to pay these Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

90. The wages withheld from these Class Members by Defendants remained due and owing for more than thirty (30) days from the date of separation from employment.

91. Defendants failed to pay Class Members without abatement, all wages as defined

1 by applicable California law. Specifically, Plaintiff did not receive her final pay until eleven days
2 after her termination. Moreover, Class Members were not paid all regular and overtime wages
3 because Defendants failed to pay for all hours worked, required off the clock work, unlawfully
4 rounded time entries to the detriment of Class Members, and failed to incorporate non-
5 discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to
6 calculate and pay for overtime. Additionally, Defendants failed to pay premium wages owed for
7 unprovided meal periods and rest periods, as further detailed in this Complaint. Defendants'
8 failure to pay said wages within the required time was willful within the meaning of Labor Code §
9 203.

10 92. Defendants' failure to pay wages, as alleged entitles these Class Members to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue until
12 paid for up to thirty (30) days from the date they were due.

13 **SEVENTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 204**
15 **(Against All Defendants)**

16 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 94. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
19 employment are due and payable twice during each calendar month, on days designated in
20 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
21 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
22 during which the labor was performed, and labor performed between the 16th and the last day,
23 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
24 month." Additionally, the requirements of this section shall be deemed satisfied by the payment of
25 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
26 calendar days following the close of the payroll period." As detailed above, Defendants
27 maintained a consistently applied policy and practice of not paying all wages earned between the
28 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned

1 between the 16th and the last day of the month between the 1st and 10th day of the following month.
2 Defendants similarly failed to pay all wages earned by not more than seven calendar days
3 following the close of the payroll period. These failures arose from Defendants' failure to pay for
4 all hours worked.

5 95. All wages due and owing to Plaintiff and the Class Members, including as required
6 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
7 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
8 payable to each Class Member in each pay period that he or she was not provided with a meal
9 period or rest period or paid straight or overtime wages or commissions to which he or she was
10 entitled.

11 96. Defendants thus violated Labor Code § 204 by systematically refusing to pay
12 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
13 applicable IWC Wage Orders, employers are required "to pay each employee, on the established
14 payday for the period involved, not less than the applicable minimum wage for all hours worked in
15 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer
16 hours than those fixed by the order or under conditions of labor prohibited by the order is
17 unlawful." Plaintiff and the Class Members may therefore pursue damages and penalties for
18 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
19 penalties under paragraph 20 of the applicable IWC Wage Orders.

20 97. As a result of the unlawful acts of Defendants, Plaintiff and Class Members seek to
21 represent they have been deprived of wages in amounts to be determined at trial, and they are
22 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
23 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
24 applicable IWC Wage Orders.

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26 ///

27 ///

28 ///

EIGHTH CAUSE OF ACTION
FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174
AND 1174.5
(Against All Defendants)

98. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

99. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

100. During the course of Plaintiff's and Class Members' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper wages, overtime, and premium pay as discussed above.

101. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code § 1174.5 for the three (3) years prior to the filing of this Complaint.

NINTH CAUSE OF ACTION
REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802
(Against All Defendants)

102. Plaintiff re-alleges and incorporates all preceding paragraphs as though set forth in full herein.

103. Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

104. Defendants have regularly required Class Members to incur business expenses in the course of performing their required job duties for Defendants including for cell phone expenses. These expenses incurred by Class Members were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Class Members for all such necessary

1 expenditures. Class Members were not reimbursed for those lawful and necessary work related
2 expenses or losses incurred in direct discharge of their job duties during employment with
3 Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the
4 applicable IWC Wage Orders, paragraph 9.

5 105. As a result of the unlawful acts of Defendants, Class Members have been deprived
6 of reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
7 plus interest and penalties thereon, attorneys' fees, and costs.

8 **TENTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

10 **(Against All Defendants)**

11 106. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 107. Plaintiff, on behalf of herself, Class Members, and the general public, brings this
14 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
15 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Class
16 Members and the general public. Plaintiff seeks to enforce important rights affecting the public
17 interest within the meaning of Code of Civil Procedure § 1021.5.

18 108. Plaintiff is a "person" within the meaning of Business & Professions Code
19 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
20 relief, restitution, and other appropriate equitable relief.

21 109. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
22 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
23 fraudulent in that Defendants' policy and practice failed to provide the required amount of
24 compensation for missed meal and rest breaks, and failed to adequately compensate Class
25 Members for all hours worked, due to systematic business practices as alleged herein that cannot
26 be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission
27 requirements in violation of California Business and Professions Code §§ 17200, *et seq.*, and for
28 which this Court should issue injunctive and equitable relief, pursuant to California Business &

1 Professions Code § 17203, including restitution of wages wrongfully withheld.

2 110. Wage-and-hour laws express fundamental public policies. Paying employees their
3 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
4 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
5 vigorously to enforce minimum labor standards, to ensure that employees are not required or
6 permitted to work under substandard and unlawful conditions, and to protect law-abiding
7 employers and their employees from competitors who lower costs to themselves by failing to
8 comply with minimum labor standards.

9 111. Defendants have violated statutes and public policies. Through the conduct alleged
10 in this Complaint Defendants have acted contrary to these public policies, have violated specific
11 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
12 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
13 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
14 guaranteed to all employees under the law.

15 112. Defendants' conduct, as alleged above, constitutes unfair competition in violation
16 of the Business & Professions Code § 17200 *et seq.*

17 113. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
18 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
19 reasonable care should have known that their conduct was unlawful; therefore their conduct
20 violates the Business & Professions Code § 17200 *et seq.*

21 114. By the conduct alleged herein, Defendants have engaged and continue to engage in
22 a business practice which violates California and federal law, including but not limited to, the
23 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
24 Code including Sections 203, 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court
25 should issue declaratory and other equitable relief pursuant to California Business & Professions
26 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
27 competition, including restitution of wages wrongfully withheld.

28 115. As a proximate result of the above-mentioned acts of Defendants, Class Members

1 have been damaged, in a sum to be proven at trial.

2 116. Unless restrained by this Court Defendants will continue to engage in such
3 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
4 should make such orders or judgments, including the appointment of a receiver, as may be
5 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
6 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
7 disgorgement of such profits as may be necessary to restore Class Members to the money
8 Defendants have unlawfully failed to pay.

9 **RELIEF REQUESTED**

10 WHEREFORE, Plaintiff prays for the following relief:

- 11 1. For an order certifying this action as a class action;
- 12 2. For compensatory damages in the amount of the unpaid minimum wages for work
13 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
14 to the filing of this action, as may be proven;
- 15 3. For liquidated damages in the amount equal to the unpaid minimum wage and
16 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 17 4. For compensatory damages in the amount of all unpaid wages, including overtime
18 and double-time pay, as may be proven;
- 19 5. For compensatory damages in the amount of the hourly wage made by Class
20 Members for each missed or deficient meal period where no premium pay was paid therefor from
21 four (4) years prior to the filing of this action, as may be proven;
- 22 6. For compensatory damages in the amount of the hourly wage made by Class
23 Members for each day requisite rest breaks were not provided or were deficiently provided where
24 no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as
25 may be proven;
- 26 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be
27 proven;
- 28 8. For penalties pursuant to Labor Code § 203 for all Class Members who quit or were

1 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

2 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
3 for all class members in violation of Labor Code § 204, as may be proven;

4 10. For restitution and/or damages for all amounts unlawfully withheld from the wages
5 for all Class Members in violation of Labor Code § 2802, as may be proven;

6 11. For restitution for unfair competition pursuant to Business & Professions Code
7 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

8 12. For an order enjoining Defendants and their agents, servants, and employees, and
9 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
10 duties adumbrated in this Complaint;

11 13. For other wages and penalties under the Labor Code as may be proven;

12 14. For all general, special, and incidental damages as may be proven;

13 15. For an award of pre-judgment and post-judgment interest;

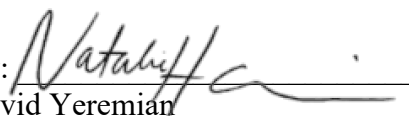
14 16. For an award providing for the payment of the costs of this suit;

15 17. For an award of attorneys' fees; and

16 18. For such other and further relief as this Court may deem proper and just.

17
18 DATED: February 8, 2024

D.LAW, INC.

19
20 By: 
21 David Yeremian
22 Natalie Haritonian
23 Jonas Agle
24 Attorneys for Plaintiff TONYA DWYER, and
25 all others similarly situated
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: February 8, 2024

D.LAW, INC.

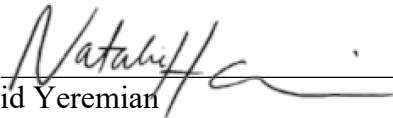
By: 
David Yeremian
Natalie Haritounian
Jonas Agle
Attorneys for Plaintiff TONYA DWYER, and
all others similarly situated

EXHIBIT 3