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7 Attorneys for Plaintiff ARTHUR QUESADA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10

11  
12 ARTHUR QUESADA, as an individual and  
on behalf of all others similarly situated,

13  
14 Plaintiff,

15 v.

16 XPDEL, INC., a California Corporation  
17 and DOES 1-100, inclusive, ADVATIX,  
18 INC., a Delaware Corporation, and DOES  
1-100, inclusive,

19 Defendants.  
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Case No.: 23CV031688

Assigned for All Purposes to:  
Hon. Michael Markman  
Dept. 23

**DECLARATION OF BRANDON  
BROUILLETTE IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

[Filed concurrently with Notice of Motion and  
Motion; Memorandum of Points & Authorities;  
Declarations of Arthur Quesada and Jodey  
Lawrence; [Proposed] Order]

Date: January 14, 2025  
Time: 10:00 a.m.  
Dept. 23

Reservation No.: 143290025208

1 I, BRANDON BROUILLETTE, declare as follows:

2 1. I am an attorney duly licensed to practice in California and before this Court, and  
3 I a partner with Crosner Legal, P.C., counsel of record for Plaintiff Arthur Quesada in the above-  
4 captioned matter. If called to testify as to the facts within, I would and could competently do so.

5 2. Attached hereto as Exhibit 1 is a fully-executed, true and correct copy of the  
6 Parties' Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement").  
7 Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff's PAGA notice letter to the  
8 LWDA and Defendant. Attached hereto as Exhibit 3 is a true and correct copy of the LWDA's  
9 acknowledgement of receipt of the proposed settlement.

10 3. I am unaware of any other pending matters that would overlap with this matter as  
11 far as claims asserted or class membership, or that would be affected the release in this matter.

12 **FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

13 4. Defendant XPDEL is a third-party fulfillment and logistics company specializing in  
14 providing supply chain solutions for both business to business and direct to consumer companies.  
15 Plaintiff worked for Defendant as an hourly paid, non-exempt delivery associate from about May to  
16 November 2021.

17 5. Plaintiff alleges a number of wage and hour violations by Defendant. First, he  
18 alleges a failure to pay for all hours worked as he and other class members had to continue  
19 working after clocking out for their meal breaks, which time was neither recorded nor paid for.  
20 For the same reason, he alleges XPDEL failed to provide all required meal and rest breaks, and  
21 that Defendant had a practice of "auto-deducting" 30 minute meal periods even though employees  
22 continued working while purportedly on a lunch break. Plaintiff also alleges XPEDL failed to provide  
23 second meal periods on shifts of 10+ hours, and further failed to provide fully compliant meal periods  
24 before the end of the fifth hour of work and pay meal period premiums when required. He further alleges  
25 rest break violations based on a non-compliant written policy and failure to provide all required rest  
26 breaks. Lastly, he alleges Defendant failed to reimburse employees for use of their personal cellular  
27 devices for company business.

28 6. Based on these allegations, on April 21, 2023, Plaintiff filed his class action complaint

1 alleging (1) failure to pay minimum wage for all hours worked (Labor Code §§ 1194, and 1194.1); (2)  
2 failure to pay overtime wages (Labor Code § 510); (3) failure to provide meal periods (Labor Code §§  
3 512 and 226.7); (4) failure to authorize or permit rest periods (Labor Code § 226.7); (5) failure to provide  
4 complete and accurate wage statements (Labor Code § 226); (6) failure to timely pay all wages due  
5 (Labor Code §§ 201-204); and (7) failure to reimburse business expenses (Labor Code § 2802); and (8)  
6 Unfair Business Practices (Bus. & Prof. Code § 17200, *et seq.*). After notice to the LWDA and  
7 exhausting administrative remedies, Plaintiff filed an amended complaint on August 5, 2024 adding  
8 PAGAs based on the same alleged Labor Code violations. The First Amended Complaint is the  
9 operative pleading for purposes of settlement.

10 7. XPDEL has at all times denied Plaintiff's allegations and maintained its meal and  
11 rest break and payroll policies and procedures comply with California law, that it paid employees  
12 for all hours worked, and that provided employees with required meal and rest breaks on a fully  
13 compliant basis. Additionally, XPDEL strongly contends the case cannot be maintained as a class  
14 action, arguing for example that to the extent class members missed meal and/or rest breaks, that  
15 such breaks were non-compliant, or that class members had to sue their own phones for work it  
16 was intermittent and infrequent and evidence of such missed breaks or phone use would be  
17 anecdotal, and therefore individualized issues would predominate.

18 8. Once the matter was at issue, the Parties began meeting and conferring regarding  
19 discovery, law and motion, and other case management issues, and ultimately agreed to attempt  
20 early mediation. The Parties also agreed on a protocol for an exchange of additional documents  
21 and information before the mediation to facilitate the settlement discussions. Consequently,  
22 Plaintiff's counsel reviewed payroll records, compensation plans, personnel policies/handbooks,  
23 meal and rest break policies, personnel files, and a random of sampling of Class Member paystubs  
24 and time records. Defendant also provided data regarding the total number of putative class  
25 members, the estimated total amount of workweeks and pay periods they worked, average pay  
26 rates, and information regarding other non-hourly compensation, among other relevant data.  
27 Plaintiff had this data analyzed by consulting experts at Berger Consulting Group to assist with  
28 evaluating potential violation rates and formulating a damages model.

1           9.       The Parties then engaged Daniel Turner, Esq., a respected professional neutral  
2 with substantial wage and hour and class action experience. In December 2023, the Parties  
3 participated in a full day mediation with Mr. Turner. Throughout the day, the arms-length  
4 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on  
5 their legal and factual positions, and made numerous offers and counter-offers. While the matter  
6 did not settle that day, the Parties continued negotiating with Mr. Turner's assistance, and  
7 ultimately both sided accepted a mediator's proposal and reached agreement on all major issues.  
8 The Parties then collaboratively drafted the Joint Stipulation of Class Action Settlement and  
9 Release ("Settlement Agreement") setting forth the settlement terms now before the Court for  
10 approval.

#### 11                               **THE PROPOSED SETTLEMENT TERMS**

12           10.       Under the settlement, XPDEL will pay \$175,000 into a common fund, the Gross  
13 Settlement Amount ("GSA"), in two equal payments approximately six months apart. Attorney's  
14 fees of up to \$58,333.33 (1/3 of the GSA), litigation costs of up to \$15,000, settlement  
15 administration costs of no more than \$8,500, a service award to Plaintiff of no more than \$10,000,  
16 and PAGA civil penalties of \$16,000, all will be paid from the GSA. The balance of around  
17 \$67,133 will be allocated pro rata to the Class Members based on their weeks worked during the  
18 Class Period. No portion of the GSA will revert to XPDEL.

19           11.       The settlement provides for conditional certification of a settlement class including  
20 all individuals employed by XPDEL in California and classified as non-exempt and who worked  
21 for Defendant during the Class Period of April 21, 2019 to the date the Court grants preliminary  
22 approval. The Settlement Class consists of about 432 individuals.

23           12.       As noted, the settlement obligates XPDEL to pay \$175,000 to resolve the  
24 Settlement Class's claims, inclusive of attorney's fees and costs. At least \$67,133 from the GSA  
25 will be distributed to the Participating Class Members. This is a cash settlement that does not  
26 require Participating Class Members to submit a claim form to receive their settlement share.  
27 Participating Class Members will receive their settlement checks automatically via First Class  
28 U.S. Mail. Twenty-five percent of each settlement share will be allocated to wages and the

1 remaining seventy-five percent will be allocated to penalties and interest, which allocation is  
2 consistent with XPDEL's potential liability. XPDEL will pay any and all applicable employer-  
3 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any  
4 amounts not claimed (because a class member does not cash their settlement check) will be  
5 forwarded to the East Bay Community Law Center as the proposed *cy pres* beneficiary. After  
6 inquiry to all other members of my firm, I am unaware of any connection or relationship with the  
7 proposed beneficiary that would reasonably create any appearance of impropriety regarding the  
8 interests of the class.

9 13. Each Participating Class Member will receive a share of the Net Settlement  
10 Amount based on his or her total weeks worked in California as a non-exempt employee during  
11 the Class Period.. Thus, each Class Member's Individual Settlement Payment will be calculated  
12 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid  
13 premium wages for missed meal and rest breaks, and potential statutory penalties under applicable  
14 law. These methods are intended to ensure each Class Member receives a settlement award  
15 corresponding to the relative value of their potential claims. The proposed allocation provides a  
16 reasonable way to compensate Class Members based on the amount of time they worked for  
17 XPDEL in California and the amount unpaid wages, the number of missed meal breaks and/or  
18 rest breaks, etc. I estimate the average award at about \$155.

19 14. Subject to the Court's approval, the Parties have agreed on Phoenix Settlement  
20 Administrators as the Settlement Administrator. Phoenix is qualified and has significant  
21 experience administering class action settlements, including numerous wage and hour matters.  
22 Phoenix's fees and costs will not exceed \$8,500.00. If the Court approves less than the above  
23 amount, the difference will remain in the Net Settlement Amount for distribution to the  
24 Participating Class Members.

25 15. The proposed Notice of Class Action Settlement (Exhibit A to the Settlement  
26 Agreement) sets out information about this case and explains the basic settlement terms in plain  
27 language. The Notice also sets forth the individualized information used to calculate Class  
28 Members' Individual Settlement Payments and each Class Member's estimated settlement

1 award. The Notice likewise details the procedures for Class Members to dispute their individual  
2 information, the procedure for submitting an objection to the Settlement, the procedure to  
3 request exclusion, and the fact that any final judgment will bind all class members who do not  
4 opt out. Cal. Rules of Court 3.769(f) and 3.766(d). In sum, the Notice provides the Class  
5 Members with the information necessary to evaluate the Settlement and decide to participate in,  
6 opt out of, or object to the proposed Settlement, and meets all requirements imposed by the  
7 California Rules of Court. Coupled with the notice procedure, the Notice provides the best  
8 notice practicable.

9 16. Class Members will have sixty (60) days to dispute the information in their  
10 Notice used to calculate their settlement award, and also have 60 days to submit any objections  
11 to the settlement or to request exclusion. If a Class Member disputes their individual  
12 information, the Settlement Administrator will review the Class Member's records and any  
13 other information submitted, and make a final determination.

14 17. All Participating Class Members will release XPDEL and the Released Parties  
15 from all claims alleged in the operative complaint, or that could have been brought based on the  
16 factual allegations in the complaint during the Class Period, and including PAGA claims alleged  
17 on the LWDA's behalf in the notice letter will be released as well for the PAGA Period. The  
18 class release is limited to the claims that were actually pleaded or could have been pleaded  
19 based on the alleged facts in the operative complaint, while the PAGA release is limited to  
20 claims alleged in the notice letter.

21 18. A modest incentive award for Plaintiff is appropriate under applicable law. He  
22 devoted time and resources to the litigation, provided documents, assisted Class Counsel with  
23 investigating the claims asserted and in preparing for mediation. The service payment provided  
24 to Plaintiff as the class representatives is typical in class action cases and reasonable. Defendant  
25 will not oppose a request for an enhancement award to Plaintiff of not more than \$10,000.00 in  
26 recognition of his time spent on this matter, the risks he undertook on behalf of the class, and the  
27 benefit conferred to the class, as addressed in his declaration filed herewith. If the Court approves  
28

1 less than the above amount, the difference will remain in the Net Settlement Amount for  
2 distribution to the Participating Class Members.

3 19. The terms of the Parties' settlement also allow Plaintiff's counsel to apply for an  
4 award of attorney's fees of up to one-third of the GSA, or \$58,333.33 and reimbursement of  
5 actual costs and expenses of up to \$15,000.00. Plaintiff's counsel will submit a request for  
6 attorney's fees and actual litigation costs at final approval per the terms of the Settlement  
7 Agreement and applicable law, and will provide the Court with appropriate information and  
8 evidence regarding hourly rates, tasks performed, and time expended on the case. If the Court  
9 approves less than the above amounts, the difference will remain in the Net Settlement Amount  
10 for distribution to the Participating Class Members.

11 20. As noted, the Parties allocated \$16,000 to resolution of Plaintiff's alleged claims  
12 under PAGA. Consistent with PAGA, \$12,000 of that amount will go to the LWDA for the  
13 State's share of the civil penalties, while the remaining \$4,000 will be distributed pro rata to the  
14 estimated 256 Aggrieved Employees. Prior to filing this motion, my office provided notice of  
15 the proposed settlement of the PAGA claims and the approval hearing to the LWDA via its  
16 online portal.

17 **The Proposed Settlement Class Should Be Conditionally Certified**

18 21. In the present matter, conditional certification is proper since this matter satisfies  
19 all requirements for class certification under Code of Civil Procedure section 382. First, the  
20 class is both sufficiently numerous, consisting of approximately 300 individuals, and  
21 ascertainable by reference to Defendant's personnel and payroll records.

22 22. Plaintiff is an adequate class representative, as his claims do not conflict with  
23 and are not antagonistic to the claims of other class members. Further, his claims are typical as  
24 he is a member of the class and his claims arise from the same employment practices and course  
25 of conduct giving rise to the claims of the other class members.

26 23. Common questions of law and fact predominate – particularly for purposes of a  
27 settlement class – as the Class Members all were paid via substantially similar company-wide  
28 policies that allegedly resulted in unpaid wages, missed/non-compliant meal and rest breaks,

1 etc. Since the focus of the claims against XPDEL concerns the legality of common policies  
2 applied uniformly to the entire class, common issues predominate over individualized inquiries  
3 concerning liability. For instance, XPDEL either had an “auto deduct” policy or did not, which  
4 policy either properly recorded meal breaks or it did not. Similarly, whether use of personal  
5 phones was “reasonable” or “necessary” to perform the required duties of the job presents yet  
6 another common issue. Regardless of these determinations, it will decide liability for all Class  
7 Members one way or another.

8 24. Resolving this matter as a class action is superior to other available means for the  
9 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)  
10 individual joinder of all members of the class is impractical, (b) class action treatment will  
11 permit a large number of similarly situated persons to resolve their common claims in a single  
12 forum simultaneously, efficiently, and without unnecessary duplication of effort and expense;  
13 and (c) the damages suffered by many of the individual class members are relatively small and  
14 the expenses and burden of individual litigation would make it difficult or impossible for them  
15 to seek redress on their own.

16 **The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of**  
17 **Reasonableness**

18 25. Prior to mediation, the parties engaged in extensive formal informal discovery to  
19 facilitate settlement discussions. As a result, Plaintiff reviewed documents and information  
20 regarding XPDEL’s payroll practices, pay stubs and time records for a sampling of class members,  
21 meal and rest break policies, etc., and information from Defendant regarding class size and  
22 breakdown of job positions, work weeks, rates of pay, and other information used to formulate a  
23 damages model. This extensive information then was analyzed by a consulting expert to look for  
24 meal and rest break violation rates, time spent working off the clock, etc., and other issues relevant  
25 to liability and damages. Plaintiff’s counsel are confident they obtained sufficient information to  
26 understand the law and facts of this case and make an informed decision regarding the proposed  
27 settlement and whether it is in the best interests of the class.  
28

1           26.     Using that data, Plaintiff ran various calculations and estimated XPDEL's likely  
2 maximum exposure on the class claims at approximately \$1,915,745, including about \$164,140  
3 on the off the clock/unpaid wage claims, approximately \$70,805 on the meal period claims,  
4 about \$455,260 on the rest period claims, about \$61,940 on the expense reimbursement claim,  
5 around \$102,600 on the wage statement claims, and \$1,061,000 on the waiting time penalty  
6 claims.

7           27.     We calculated these amounts as follows:

8     **Unpaid Wages/Off the Clock**

9     6,194 work weeks \* 2 hours OTC/week \* \$13.25/hour avg. minimum wage = \$164,140

10    **Meal Period Violations**

11    19,567 shifts \* 17.6% unique violation rate \* \$20.56/hour avg. wage = \$70,805

12    **Rest Period Violations**

13    22,143 shifts \* 100% violation rate \* \$20.56/hour avg. wage = \$455,260

14    **Expense Reimbursement**

15    6,194 work weeks \* \$10/week = \$61,940

16    **Wage Statement Violations**

17    256 initial violations \* \$50/violation \* 898 subsequent violations \* \$100/violation = \$102,600

18    **Waiting Time Penalties**

19    215 former employees \* (240 hours \* \$20.56/hour) = \$1,061,000

20           28.     On the unpaid wage claims, Plaintiff alleged that, due to understaffing and the  
21 press of business, he and the class members regularly had to continue working during their meal  
22 breaks even though they had clocked out, and that XPDEL simply "auto-deducted" 30 minutes  
23 of time for each shift even though employees were working during that time. Accordingly,  
24 Plaintiff contends he lost at least 2 hours of pay each week for this "off the clock" work. In  
25 response, XPDEL argued its timekeeping and payroll policies were fully compliant and that it  
26 accurately tracked and paid for all hours worked. It also emphasized that off the clock was  
27 strictly prohibited and accordingly if any employees worked while clocked out it was against  
28 company policy and done on a voluntary basis, and without the company's knowledge. For the

1 same reason, XPDEL contended this issue was not suitable for class certification, as  
2 determining the reasons behind any alleged off the clock work would have required extensive  
3 individualized inquiries.

4 29. On the meal and rest break claims, Plaintiff contends that XPDEL's alleged  
5 "auto-deduct" policy obscured the fact that employees worked through meal periods or did not  
6 receive fully compliant meal periods. Thus, per Plaintiff even minor infringements on the meal  
7 period requirements resulted in a violation and obligation for XPDEL to pay the required  
8 premium pay. Plaintiff's review of the time and payroll records provided suggested these  
9 deficiencies in the policies affected employee breaks. For example, Plaintiff's expert's analysis  
10 showed at least a 17.6% violation rate for meal period violations. Plaintiff also alleged XPDEL  
11 failed to provide second lunches on shifts of 10 or more hours. Similarly, Plaintiff alleged  
12 XPDEL's written break policy likewise was non-compliant, failed to properly reflect the time  
13 periods for taking breaks, and also resulted in "de facto" violations as well as the absence of  
14 third rest breaks on shifts over 10 hours.

15 30. In response, XPDEL argued its written meal and rest break policies are fully  
16 compliant, and that it provided employees with the opportunity to receive all required breaks.  
17 Defendant further maintained that, in light of its compliant policies, whether a class member  
18 missed a meal period, received a late meal period, or missed a rest break would have been  
19 aberrational and against company policy. Thus, per XPDEL, these issues are not amenable to  
20 class or representative treatment since their resolution would require individualized inquiries as  
21 to why a break was missed or non-compliant.

22 31. On the expense reimbursement claim, Plaintiff alleges Defendant's management  
23 and supervisors would constantly text Plaintiff and other employees on their cell phones  
24 throughout their shifts to communicate with them on work-related issues, and that no  
25 reimbursement was paid. On the hand, XPDEL argued there would be no conceivable need for  
26 employees to use their own phones while working or for any work-related purposes, and if they  
27 did so it was purely for personal convenience rather than business necessity. Thus, per XPDEL,  
28 no reimbursement is owed.

1           32.     The claims under Labor Code sections 203 and 226 are derivative of the primary  
2 unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus  
3 additional risks posed by the need to take into account the discretionary nature of such awards  
4 and the “good faith” and other defenses available to Defendant. Thus, while these claims  
5 largely are derivative of the unpaid wage claim, they also are subject to additional defenses.

6           33.     As far as potential PAGA liability, the allegedly aggrieved employees theoretically  
7 are entitled to penalties totaling around \$415,000 in civil penalties should Plaintiff prevail on all  
8 claims and establish violations of the multiple Labor Code sections as to each and every pay  
9 period at issue. As with the class claims, Plaintiff discounted the potential PAGA penalties based  
10 on Defendant’s various defenses on the merits and also accounted for the Court’s wide discretion  
11 to reduce such penalties, or to decline to award penalties at all. Accordingly, the Parties allocated  
12 \$16,000 to PAGA penalties, and Plaintiff submits this amount is reasonable under the  
13 circumstances and in line with comparable settlements in other wage and hour class actions in  
14 California. Additionally, the LWDA has been informed of the terms of the PAGA portion of the  
15 settlement, and will be able to weigh in as necessary.

16           34.     The settlement obviates the significant risk that this Court may find any kind of  
17 class or representative resolution unachievable or deny certification of all or some of Plaintiff’s  
18 claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims,  
19 continued litigation would be lengthy and expensive as the parties pursued merits discovery, a  
20 probable motion to decertify, as well as trial and possible appeals, and would further and  
21 substantially delay any recovery by the class with no assurance of recovering significantly more  
22 than the proposed settlement. While Plaintiff is confident in the merits of these claims,  
23 legitimate controversies exist regarding each one of them. Plaintiff also recognizes proving the  
24 amount of wages and penalties due each Class Member would be an expensive, time-  
25 consuming, and uncertain proposition.

26           35.     Plaintiff and I discounted the value of the class claims consistent with the risks  
27 discussed above, and carefully weighed the likelihood of the class receiving substantially  
28 greater benefit if the litigation continued. We concluded – in light of these very real and

1 substantial risks – settlement on the proposed terms and without prolonged and costly litigation  
2 was in the best interests of the class, and the overall \$175,000 recovery represents a significant  
3 percentage of Defendant’s potential exposure. Given these risks, a total recovery for the class of  
4 \$175,000, which will result in average award of some \$224 per class member, is a significant  
5 result well within the range of reasonableness considering all potential outcomes, and it will  
6 provide direct monetary awards to all Class Members without further delay.

7 36. I have been a Partner at Crosner Legal since February 1, 2023. Prior to joining  
8 Crosner Legal, I was a Senior Associate and Team Director of a Wage and Hour Litigation  
9 Team at Capstone Law APC, which I originally joined as an associate attorney in May 2016.

10 37. Since being admitted to the California State Bar in 2010, my entire legal career  
11 has been dedicated to protecting employee and consumer rights through the prosecution of class  
12 action and representative actions filed on behalf of plaintiffs in class actions and statewide  
13 representative actions. Throughout my career I have managed or co-managed more than 100  
14 class action and PAGA representative cases, from initial filing of the complaint through final  
15 resolution.

16 38. In particular, I have served as class counsel in several certified class action cases,  
17 including:

- 18 a. *Party City Wage and Hour Cases*, JCCP4781 (class counsel for certified class of  
19 non-exempt hourly employees who worked for Defendants in California)
- 20 b. *Lewis v. Express Messenger Systems*, Los Angeles Superior Court Case No.  
21 BC501521 (class counsel for certified class of last-mile delivery drivers who were  
22 alleged to be misclassified as independent contractors)
- 23 c. *Ramirez-Vivar v. Grifols Diagnostic Solutions, Inc., et al.*, Alameda County Superior  
24 Court, Case No. RG21099519 (class counsel for certified classes of non-exempt  
25 hourly employees who worked for Defendants in California)
- 26 d. *Jones v. LA Live*, Los Angeles County Case No. BC687908 (class counsel for  
27 certified issue classes consisting of hourly employees who worked at Staples Center  
28 and Nokia Theater)

1           39.     The following is a representative sample of settlements in wage and hour class  
2 action and PAGA representative cases in which I was listed as an attorney of record and either  
3 managed, or co-managed with attorneys at my firm and other co-counsel:

- 4           e.   *Cruz v. Walmart*, Los Angeles County Super. Ct. Case No. 18STCV03128 (\$15  
5 million global PAGA settlement on behalf of hourly employees statewide for alleged  
6 Labor Code violations.)
- 7           f.   *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Super. Ct., Case No. C  
8 15-02051 (\$11 million global PAGA settlement on behalf of over 36,000 employees  
9 for Labor Code violations.)
- 10          g.   *Gross v. Sodexo*, Kern County Super Ct., Case No. BCV-18-101746 Capstone (\$4.75  
11 million class and PAGA settlement on behalf of class of non-hourly employees for  
12 Labor Code violations.)
- 13          h.   *Campbell v. AEG* (\$1.8M class and PAGA settlement on behalf of group of hourly  
14 employees who worked at concert venues in California for alleged Labor Code  
15 violations)
- 16          i.   *Fiebelkorn v. AEG*, et al. Los Angeles Superior Court Case No. BC717337 (\$1.75M  
17 class settlement on behalf of group of hourly employees who worked at Oakland  
18 Coliseum for alleged Labor Code violations)
- 19          j.   *Amaro v. Anaheim Arena Management*, Orange County Superior Court Case No. 30-  
20 2017-00917542 (\$2,212,500 class and PAGA settlement on behalf of group of  
21 hourly employees who worked at Honda center in Anaheim California for alleged  
22 Labor Code violations)
- 23          k.   *Espindola v. Panda Express*, San Bernardino Superior Court Case No.  
24 CIVDS1931455 (\$3.125M class and PAGA settlement on behalf of hourly  
25 employees statewide for alleged Labor Code violations)
- 26          l.   *Gold v. Benihana*, San Diego Court Superior Court Case No. 37-2016-00022320-  
27 CU-OE-NC (\$2.25M class and PAGA settlement on behalf of hourly employees  
28 statewide for alleged Labor Code violations)

- 1 m. *Party City Wage and Hour Cases*, JCCP4781 (\$6.5M class and PAGA settlement on  
2 behalf of hourly employees statewide for alleged Labor Code violations)
- 3 n. *Lewis v. Express Messenger Systems*, Los Angeles County Super Court Case No.  
4 BC501521 (\$10.5M class and PAGA settlement on behalf of a statewide group of  
5 independent contractor last-mile delivery drivers alleged to be misclassified)
- 6 o. *Flores v. Tesla*, Alameda County Superior Court Case No. RG18907072 (\$4M class  
7 and PAGA settlement on behalf of statewide group of hourly employees for alleged  
8 Labor Code violations)
- 9 p. *Ruiz v. Disney Stores*, San Bernardino Superior Court Case No. CIVDS2016983  
10 (\$2M class and PAGA settlement on behalf of statewide group of hourly employees  
11 who worked at retail stores in California for alleged Labor Code violations)
- 12 q. *Ramirez v. Yin Management*, Sacramento County Superior Court Case No. 34-2021-  
13 00301530 (\$1.8M class and PAGA settlement on behalf of statewide group of hourly  
14 employees who worked at Defendant's McDonald's franchises in California for  
15 alleged Labor Code violations).
- 16 r. *Suhartono v. RRG Besh*, Los Angeles County Superior Court Case No.  
17 19STCV22184 (\$2.25 class and PAGA settlement on behalf of statewide group of  
18 hourly employees who worked at Defendant's McDonald's franchises in California  
19 for alleged Labor Code violations).
- 20 s. *Gomes v. Kura Sushi*, Los Angeles County Superior Court Case No. 19STCV18977  
21 (\$1.75M class and PAGA settlement on behalf of statewide group of hourly  
22 employees who worked at Defendant's restaurants in California for alleged Labor  
23 Code violations)
- 24 t. *Saldana v. Hydrochem*, Contra Costa Superior Court Case No. CIVMSC19-02624  
25 (\$1.38M class and PAGA settlement on behalf of statewide group of hourly  
26 employees for alleged Labor Code violations).

27 40. In addition, below are settlements in consumer class action cases in which I was  
28 listed as an attorney of record and either managed, or co-managed with attorneys at my firm:

- 1 u. *Lopez v. Seterus, et al.*, Los Angeles Superior Court Case No. BC484297 (\$3M Class  
2 settlement on half of thousands of borrowers in California, Florida, and Texas for  
3 UCL violations premised on improper late fee collections)
- 4 v. *McGill v. Citibank*, Riverside County Superior Court Case No. RIC 1109398 (in  
5 landmark case that established the ‘McGill rule’ precluding the waiver of public  
6 injunctive relief in pre-dispute arbitration agreements, negotiated confidential  
7 settlement on behalf of consumer who sued for damages and class injunctive relief  
8 stemming from marketing of credit protector plan)

9 41. Finally, I have been selected by my peers as a Super Lawyers ‘Rising Star’ every  
10 year since 2016 through 2022, which is a recognition that is provided to only 2.5% of active  
11 lawyers practicing within the State of California

12 42. Zachary Crosner is a 2010 graduate of University of San Diego School of Law. He  
13 has some fourteen years of experience as a practicing attorney, all of which have focused on  
14 litigation of employment, labor law, consumer, and class action claims. Following graduation, he  
15 immediately began working for a nationally recognized plaintiff-side complex litigation firm,  
16 CaseyGerry, where he had the fortune of working directly with past presidents of the consumer  
17 attorneys and recipients of trial attorneys of the year awards. He also worked for former CAALA  
18 and CLAY trial attorney of the year recipient, attorney Conal Doyle, as his sole associate attorney.  
19 During his tenure at these firms, he focused on advocating for the rights of consumers and  
20 employees in class action litigation, civil rights and employment litigation, catastrophic injuries,  
21 insurance bad faith, and appellate litigation.

22 43. In 2013, he founded the law firm of Crosner Legal, P.C., which since its inception  
23 has focused almost exclusively on wage and hour class actions and other labor and employment  
24 law cases representing plaintiffs. Currently, over ninety percent (90%) of the firm’s practice is  
25 dedicated exclusively to the prosecution of wage and hour class actions, and the law firm is  
26 currently responsible as lead counsel or co-lead counsel for prosecuting well over fifty (50) wage  
27 and hour class actions and/or PAGA representative actions in both federal and state courts  
28 throughout California.

1           44.     Mr. Crosner currently is an executive board member of the Wage and Hour  
2 Committee and the Legislative Committee for the California Employment Lawyers Association;  
3 a member of the Grassroots Advocacy Team for the National Employment Lawyers Association;  
4 Wage and Hour Committee member and Class Action Committee member for the National Trial  
5 Lawyers; a member of the American Association for Justice; and a member of the Pound Civil  
6 Justice Institute. He also was selected by Super Lawyers as a “Southern California Rising Star”  
7 for employment and labor law for 2018-2020.

8           45.     Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class  
9 action settlements while serving as lead class counsel in recent years, including but not limited to  
10 a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America,*  
11 *Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action  
12 settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252  
13 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017  
14 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)),  
15 a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises,*  
16 *Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage  
17 and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-  
18 2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v.*  
19 *Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15  
20 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case  
21 No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in  
22 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara  
23 Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al.*  
24 *v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million  
25 dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray’s Tree Service, Inc.*,  
26 Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1 million wage and hour class  
27 action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty.  
28 Super. Ct.)), a \$1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v.*

1 *FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a \$2.38  
2 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*,  
3 Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million wage and hour class action  
4 settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino  
5 Cty. Super. Ct.); \$1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo*  
6 *Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a \$1.15 million  
7 wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*,  
8 Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a \$1.5 million wage and hour class action  
9 settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super.  
10 Court); a \$1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case  
11 No. 20STCV06618 (Los Angeles Cty. Super. Court); a \$1.925 million wage and hour class  
12 settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super.  
13 Ct); and a \$1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v.*  
14 *Signature Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.).

15 46. For all the foregoing reasons, I believe the settlement is fair, reasonable, and in the  
16 best interests of the class.

17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct. Executed this 19<sup>th</sup> day of December, 2024, at Los Angeles,  
19 California.

20  
21   
22 \_\_\_\_\_  
23 Declarant  
24  
25  
26  
27  
28

# **EXHIBIT**

**1**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

ARTHUR QUESADA, as an individual  
on behalf of all others similarly situated,

Plaintiff,

v.

XPDEL, INC., a California corporation;  
and DOES 1-100, inclusive,

Defendant.

Case No. 23CV031688

CLASS AND REPRESENTATIVE ACTION

[Hon. Tara M. Desautels, Dept. 23]

**CLASS AND PAGA ACTION SETTLEMENT  
AND CLASS NOTICE**

**Complaint filed:** April 21, 2023  
**FAC filed on:** August 5, 2024

## CLASS AND PAGA ACTION SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class and PAGA Action Settlement Agreement (“Agreement”) is made by and between plaintiff Arthur Quesada (“Plaintiff”) and defendant XPDEL, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as the “Parties,” or individually as a “Party.”

### 1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Arthur Quesada v. XPDEL, Inc.* initiated on April 21, 2023 and pending in Superior Court of the State of California, County of Alameda, Case No. 23CV031688.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement based on its not-to-exceed bid.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all hourly-paid, non-exempt employees of Defendant who worked in California during the PAGA Period.
- 1.5. “Class” means all hourly-paid, non-exempt employees of Defendant who worked in California during the Class Period.
- 1.6. “Class Counsel” means the attorneys of Crosner Legal, PC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means, including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A hereto and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period starting on April 21, 2019 through the date the Court grants preliminary approval of the class action settlement or 90-days after the acceptance of the proposal, whichever is later, or if Defendant elects to exercise its rights under the Escalator Clause, the date on which the total number of workweeks worked by Class members totals 6,813 workweeks (“Class Period”).
- 1.13. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Alameda.
- 1.16. “Defendant” means named Defendant XPDEL, Inc.
- 1.17. “Defense Counsel” means the attorneys of Saber Law Group.
- 1.18. “Effective Date” means the date by when both of the following have occurred: (1) the Court enters a Final Judgment on its Order Granting Final Approval of the Settlement; and (2) the Judgment is final. 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 Final 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 Final Judgment (*i.e.*, 61 days after Final Judgment is entered); or (c) if a timely appeal from the Final Judgment is filed, the day after the appellate court affirms the Final Judgment and issues a remittitur.

- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$175,000.00, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8 below and in addition to Defendant’s employer share of taxes owed on the Wage Portion of Individual Class Payments to Participating Class Members. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Class Representative Service Payment, and the Administration Expenses Payment.
- 1.23. “Individual Class Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. “Individual PAGA Payment” means an 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.
- 1.25. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).
- 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28. “Non-Participating Class Member” means any Class Member who opts out of the

Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.29. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee actually worked for Defendant for at least one day during the PAGA Period, and specifically excludes paid time off where the Aggrieved Employee performed no work, including but not limited to, holidays, PTO, administrative and other leaves of absences.

1.30. “PAGA Period” means the period starting on April 21, 2022 through the date the Court grants preliminary approval of the class action settlement or 90-days after the acceptance of the proposal, whichever is later, or if Defendant elects to exercise its rights under the Escalator Clause, the date on which the total number of workweeks worked by Class members totals 6,813 workweeks (“PAGA Period”).

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

1.32. “PAGA Notice” means Plaintiff’s March 25, 2024 PAGA letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

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

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

1.35. “Plaintiff” means Arthur Quesada, the named plaintiff in the Action.

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

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

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

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

1.40. “Released Parties” means: Defendant XPDEL, Inc. and its current and former parents,

1 subsidiaries, affiliates, joint ventures, directors, officers, shareholders, owners, employees,  
2 agents, attorneys, insurers, predecessors, successors, and assigns, and any other person  
3 acting by, through, or under Defendant.

4 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be  
5 excluded from the Class Settlement signed by the Class Member.

6 1.42. "Response Deadline" means forty-five (45) calendar days after the Administrator mails the  
7 Class Notice to Class Members, plus an additional fourteen (14) calendar days for Class  
8 Members to whom their Class Notice is resent after having been returned undeliverable to  
9 the Administrator, and shall be the last date on which Class Members may: (a) fax, email,  
10 or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her  
11 Objection to the Settlement.

12 1.43. "Settlement" means the disposition of the Action effected by this Agreement and the  
13 Judgment.

14 1.44. "Workweek" means any week during which a Class Member actually worked for  
15 Defendant for at least one day during the Class Period, and specifically excludes paid time  
16 off where the Class Member performed no work, including but not limited to, holidays,  
17 PTO, administrative and other leaves of absences.

18 **2. RECITALS.**

19 2.1. On April 21, 2023, Plaintiff commenced this Action by filing a Class Action Complaint  
20 (Case No23CV031688) alleging causes of action against Advatix, Inc. and Defendant  
21 XPDEL, Inc. for (1) Recovery of Unpaid Minimum Wages and Liquidated Damages; (2)  
22 Recovery of Unpaid Overtime Wages; (3) Failure to Provide Meal Periods or  
23 Compensation in Lieu Thereof; (4) Failure to Provide Rest Periods or Compensation in  
24 Lieu Thereof; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to  
25 Timely Pay All Wages Due Upon Separation of Employment; (7) Failure to Reimburse  
26 Business Expenses; and (8) Unfair Competition. On August 18, 2020, Plaintiff filed an  
27 Opposition to Defendant's Motion to Dismiss. On June 6, 2023, Plaintiff requested to  
28 dismiss Advatix, Inc. as a defendant and Judge Brad Seligman granted the dismissal of

Advatix, Inc. on June 15, 2023. On June 20, 2023, Defendant XPDEL filed its answer denying the allegations in the complaint, any failure to comply with the laws identified in the complaint, and any and all liability for the causes of action alleged.

2.2. On December 1, 2023, the Parties participated in a private, all-day mediation presided over by Daniel J. Turner, Esq. which led to this Agreement to settle the Action.

2.3. Prior to mediation, Plaintiff obtained, through formal and informal discovery, Plaintiff's personnel, time, and payroll records, a sample of time and payroll records for the putative Class, policy documents regarding Defendant's wage and hour practices, and information regarding the Class statistics. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129–130 (“*Dunk/Kullar*”).

2.4. As a condition of this settlement, and in order to release the Labor Code claims alleged in Plaintiff's complaint under PAGA, on March 25, 2024, Plaintiff filed a PAGA Notice with the LWDA that contains the same allegations as those contained in the complaint. After exhausting PAGA's administrative remedy pursuant to Labor Code § 2699.3(a), on August 5, 2024, Plaintiff filed the First Amended Class and Representative Action Complaint, which included a PAGA cause of action. The First Amended Class and Representative Action Complaint is the operative complaint in this Action (the “Operative Complaint”).

2.5. The Parties agreed that the Defendant and Defense Counsel need not file any response to the Operative Complaint.

2.6. The Court has not granted class certification.

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

### 3. **MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$175,000 and no more, subject to the escalator clause in Paragraph 8

below, as the Gross Settlement Amount and to separately pay Defendant's share of employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount or payroll taxes prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

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

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$58,333.33, and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments provided that do not exceed

these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount for distribution to Participating Class Members. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.

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

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Of the

remainder of each Participating Class Member's Individual Class Payment, 40% will be allocated to settlement of claims for interest and 40% for 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 \$16,000.00 to be paid from the Gross Settlement Amount, with 75% (\$12,000.00) allocated to the LWDA PAGA Payment and 25% (\$4,000.00) allocated to the Individual PAGA Payments.

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 (\$4,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

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 for distribution to Participating Class Members.

3.3. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. Defendant has contended and continues to contend that the allegations in the

1 Action, including the Operative Complaint and PAGA Notice, have no merit and do not  
2 give rise to liability. Defendant denies all of the allegations in Plaintiff's Operative  
3 Complaint and PAGA Notice and in the Action, including specifically that it has violated  
4 any federal, state, or local law. Defendant maintains that it has complied in good faith  
5 with California wage and hour law and dealt fairly and legally with Plaintiff and the Class  
6 Members and Aggrieved Employees. Nonetheless, Defendant has concluded that further  
7 proceedings in the Action would be protracted and expensive, and that the Action be fully  
8 and finally settled in the manner and upon the terms and conditions set forth in this  
9 Agreement in order to dispose of burdensome and protracted litigation. This settlement  
10 is a compromise of such highly disputed claims. Defendant has agreed to settle the Action  
11 on the terms and conditions set forth in this Agreement for the sole purpose of avoiding  
12 the burden, expense, and uncertainty of continuing the Action. Nothing in this Agreement  
13 is intended or should be construed as an admission by Defendant that any of the allegations  
14 in the Action, including the Operative Complaint and/or PAGA Notice have merit or that  
15 Defendant has any liability for any claims asserted; nor should it be intended or construed  
16 as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties  
17 agree that class certification and representative treatment is for purposes of this Settlement  
18 only. If, for any reason, the Court does grant Preliminary Approval or Final Approval or  
19 enter Final Judgment, Defendant reserves the right to contest certification of any class for  
20 any reasons, Defendant reserves all available defenses to the claims in the Action, and  
21 Plaintiff reserves the right to move for class certification on any grounds available and to  
22 contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness  
23 to settle the Action will have no bearing on, and will not be admissible in connection with,  
24 any litigation (except for proceedings to enforce or effectuate the Settlement and this  
25 Agreement). This Settlement and Agreement and its terms and provisions shall not be  
26 offered or received as evidence in any action or proceeding to establish any liability or  
27 admission on the part of any Defendant or other Released Party to establish the existence  
28 of any condition constituting a violation of or non-compliance with federal, state, local,

or other applicable law.

**4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records as of December 1, 2023, Defendant estimated there were 360 Class Members who collectively worked a total of 6,194 Workweeks, and 244 Aggrieved Employees who collectively worked a total 2,194 of PAGA Pay Periods.

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

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes owed on the Wage Portion of Individual Class Payments, by transmitting the funds to the Administrator in three equal installments, or as close to equal as possible, as follows: (1) first payment of \$87,500.00 on the later of April 1, 2024 or 30 days after the entry of the Court's Final Approval; (2) second payment of \$87,500.00 within six (6) months of the class action settlement.

4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Defendant fully funds the Gross Settlement Amount and Defendant's share of payroll taxes, the

1 Administrator will mail checks for all Individual Class Payments, all Individual PAGA  
2 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class  
3 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class  
4 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the  
5 Class Counsel Litigation Expenses Payment, and the Class Representative Service  
6 Payment shall not precede disbursement of Individual Class Payments and Individual  
7 PAGA Payments.

8 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
9 Individual PAGA Payments and send them to the Class Members via First Class  
10 United States Postal Mail (“USPS”) Mail, postage prepaid. The face of each check  
11 shall prominently state the date (not less than 180 days after the date of mailing)  
12 when the check will be voided (the “Void Date”). The Administrator will cancel  
13 all checks not cashed by the Void Date. The Administrator will send checks for  
14 Individual Settlement Payments to all Participating Class Members (including  
15 those for whom their Class Notice was returned undelivered). The Administrator  
16 will send checks for Individual PAGA Payments to all Aggrieved Employees  
17 (including Non-Participating Class Members who qualify as Aggrieved  
18 Employees, and including those for whom their Class Notice was returned  
19 undelivered). The Administrator may send Participating Class Members a single  
20 check combining the Individual Class Payment and the Individual PAGA Payment.  
21 Before mailing any checks, the Settlement Administrator must update the  
22 recipients’ mailing addresses using the National Change of Address Database.

23 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
24 Class Members whose checks are returned undelivered without USPS forwarding  
25 address. Within 7 calendar days of receiving a returned check, the Administrator  
26 must re-mail checks to the USPS forwarding address provided or to an address  
27 ascertained through the Class Member Address Search. The Administrator need  
28 not take further steps to deliver checks to Class Members whose checks are

1 returned as undelivered a second time. However, the Administrator shall promptly  
2 send a replacement check to any Class Member whose original check was lost or  
3 misplaced, as requested by said Class Member prior to the Void Date.

4 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
5 PAGA Payment check is uncashed and cancelled after the Void Date, the  
6 Administrator shall transmit the funds represented by such checks to the Parties'  
7 selected *cy pres* recipient, East Bay Community Law Center subject to the  
8 requirements of California Code of Civil Procedure Section 384, subd. (b).

9 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
10 not obligate Defendant to confer any additional benefits or make any additional  
11 payments to Class Members (such as 401(k) contributions or bonuses) beyond  
12 those specified in this Agreement.

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

17 5.1. Plaintiff's Release. Plaintiff, on his behalf and on behalf of his respective former and  
18 present spouses, representatives, agents, attorneys, heirs, administrators, successors, and  
19 assigns generally, releases and discharges Released Parties from all claims, transactions,  
20 or occurrences that occurred during the Class Period, including, but not limited to: (a) all  
21 claims that were alleged, or reasonably could have been alleged based on the facts  
22 contained, in the Plaintiff's Operative Complaint; (b) all PAGA claims that were alleged,  
23 or reasonably could have been alleged based on facts contained, in the Operative  
24 Complaint and Plaintiff's PAGA Notice; and (c) all claims related to or arising from his  
25 employment with Defendant ("Plaintiff's Release"). Plaintiff's Release does not extend  
26 to any claims or actions to enforce this Agreement, or to any claims for vested benefits,  
27 unemployment benefits, disability benefits, social security benefits, workers'  
28 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 § 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. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and on behalf of their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, transactions, or occurrences that occurred during the Class Period and that were alleged, or reasonably could have been alleged based on the facts contained, in the Operative Complaint. Except as set forth in Section 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. Release by LWDA. Plaintiff, as a proxy or agent of the LWDA, hereby releases all of the PAGA claims stemming from the claims, transactions, or occurrences for all Aggrieved Employees that occurred during the PAGA Period that were alleged based on the facts contained in the Operative Complaint and Plaintiff's PAGA Notice.

1     **6. MOTION FOR PRELIMINARY APPROVAL.**

2             Plaintiff agrees to prepare and file a motion for preliminary approval (“Motion for  
3 Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals,  
4 and Defendant agrees not to oppose said Motion for Preliminary Approval.

5             6.1.     Defendant’s Declaration in Support of Preliminary Approval. Within 21 calendar days of  
6 the full execution of this Agreement, Defendant and Defendant Counsel will prepare and  
7 deliver to Class Counsel (1) a signed Declaration from Defendant and (2) a signed  
8 Declaration from Defense Counsel disclosing all facts relevant to any actual or potential  
9 conflicts of interest with the proposed Administrator. In their Declarations, Defense  
10 Counsel and Defendant shall aver that they are not aware of any other pending matter or  
11 action asserting claims that will be extinguished or adversely affected by the Settlement.

12             6.2.     Plaintiff’s Responsibilities. Plaintiff will prepare all documents necessary for obtaining  
13 Preliminary Approval, including: (i) a notice, and memorandum in support, of the Motion  
14 for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*  
15 and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a  
16 proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a  
17 proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and  
18 competency to serve as the Class Representative, and disclosing all facts relevant to any  
19 actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a  
20 signed declaration from Class Counsel attesting to its competency to represent the Class  
21 Members; its transmission to the LWDA of all necessary PAGA documents (initial notice  
22 of violations [Labor Code § 2699.3(a)], Operative Complaint [Labor Code § 2699(l)(1)],  
23 and this Agreement [Labor Code § 2699(l)(2)]; (vi) a redlined version of the Parties’  
24 Agreement showing all modifications made ready for filing with the Court; and (vii) all  
25 facts relevant to any actual or potential conflict of interest with Class Members and/or the  
26 Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are  
27 not aware of any other pending matter or action asserting claims that will be extinguished  
28 or adversely affected by the Settlement.

6.3. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 60 days after the full execution of this Agreement. Class Counsel and Defense Counsel are jointly responsible for conferring over and obtaining a prompt hearing date for the Motion for Preliminary Approval, and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

## 7. SETTLEMENT ADMINISTRATION.

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

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

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation

§ 468B-1.

7.4. Notice to Class Members.

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

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

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

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) calendar days beyond the forty-five (45) calendar days otherwise provided in the Class Notice for all Class Members whose Class Notice

1 is re-mailed. The Administrator will inform the Class Member of the extended  
2 deadline with the re-mailed Class Notice.

3 7.4.5. If the Administrator, Defendant, Defense Counsel, Plaintiff, or Class Counsel is  
4 contacted by or otherwise discovers any persons who believe they should have  
5 been included in the Class Data and should have received Class Notice, the Parties  
6 will expeditiously meet and confer in person or by telephone, and in good faith, in  
7 an effort to agree on whether to include them as Class Members. If the Parties  
8 agree, such persons will be Class Members entitled to the same rights as other Class  
9 Members, and the Administrator will send, via email or overnight delivery, a Class  
10 Notice requiring them to exercise options under this Agreement not later than  
11 fourteen (14) calendar days after receipt of Class Notice, or the deadline date  
12 provided in the Class Notice, whichever is later.

13 7.5. Requests for Exclusion (Opt-Outs).

14 7.5.1. Class Members who wish to exclude themselves (*i.e.*, opt-out of) the Class  
15 Settlement must send the Administrator, by fax, email, or mail, a signed and written  
16 Request for Exclusion. A Request for Exclusion is a letter from a Class Member  
17 or his/her representative that reasonably communicates the Class Member's  
18 election to be excluded from the Settlement, identifies the Action, and includes the  
19 Class Member's identifying information (name, last four digits of his or her Social  
20 Security Number, address, email address, and telephone number) for verification  
21 purposes. To be valid, a Request for Exclusion must be timely faxed, emailed, or  
22 postmarked by the Response Deadline.

23 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails  
24 to contain all the information specified in the Class Notice. The Administrator shall  
25 accept any Request for Exclusion as valid if the Administrator can reasonably  
26 ascertain the identity of the person as a Class Member and the Class Member's  
27 desire to be excluded. The Administrator's determination shall be final and not  
28 appealable or otherwise susceptible to challenge. If the Administrator has reason

1 to question the authenticity of a Request for Exclusion, the Administrator may  
2 demand additional proof of the Class Member's identity. The Administrator's  
3 determination of authenticity shall be final and not appealable or otherwise  
4 susceptible to challenge.

5 7.5.3. Every Class Member who does not submit a timely and valid Request for  
6 Exclusion is deemed to be a Participating Class Member under this Agreement,  
7 entitled to all benefits and bound by all terms and conditions of the Settlement,  
8 including the Participating Class Member's Releases under Paragraphs 5.2 and 5.3  
9 of this Agreement, regardless whether the Participating Class Member actually  
10 receives the Class Notice or objects to the Settlement.

11 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a  
12 Non-Participating Class Member and shall not receive an Individual Class  
13 Payment or have the right to object to the class action components of the  
14 Settlement. Nonetheless, because future PAGA claims are subject to claim  
15 preclusion upon entry of the Final Judgment, the release provided by the LWDA  
16 extends to Non-Participating Class Members who are Aggrieved Employees  
17 identified in Paragraph 5.3 of this Agreement and are eligible for an Individual  
18 PAGA Payment.

19 7.6. Challenges to Calculation of Workweeks and/or PAGA Pay Periods. Each Class Member  
20 shall until the Response Deadline to challenge the individual number of Class Workweeks  
21 and (if any) PAGA Pay Periods allocated to the Class Member in the Class Notice. The  
22 Class Member may challenge the allocation by communicating with the Administrator via  
23 fax, email, or mail. The Administrator must encourage the challenging Class Member to  
24 submit supporting documentation. In the absence of any contrary documentation, the  
25 Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods  
26 contained in the Class Notice is/are correct so long as it/they is/are consistent with the Class  
27 Data. The Administrator's determination of each Class Member's allocation of  
28 Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise

susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7. Objections to Settlement.

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

7.7.2. Participating Class Members who wish to object to the Class Settlement may send the Administrator, by fax, email, or mail, a signed and written objection by the Response Deadline. In addition or in the alternative, Participating Class Members may object by appearing in Court (or hire an attorney to appear in Court on their behalf) to present verbal objections at the Final Approval Hearing. A written objection is a letter from a Participating Class Member or his/her representative that reasonably communicates what the Participating Class Member objects to and the reason(s) for the objection, facts supporting the objection, identifies the Action, and includes the Participating Class Member's approximate dates of employment for Defendant and identifying information (name, last four digits of his or her Social Security Number, address, email address, and telephone number) for verification purposes. To be valid, a written objection must be timely faxed, emailed, or postmarked by the Response Deadline.

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 and 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; the Class Notice; the Motion for Preliminary Approval; the Preliminary Approval; the Motion for Final Approval and/or the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment; the Final Approval; and the Final 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), Exclusion List, and Objections. The Administrator will promptly review, on a rolling basis, Requests for Exclusion and written objections to ascertain their validity and/or timeliness. Not later than seven (7) calendar days after the expiration of the Response Deadline for submitting Requests for Exclusion or written objections, 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”) or written objections; (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion or written objections; and (c) copies of all Requests for Exclusion from Settlement or written objections 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, timely or untimely) received, objections received (whether timely or untimely), and challenges to Workweeks and/or PAGA Pay Periods received and/or resolved. The Weekly Reports must include provide the Administrator’s assessment of the validity and/or timeliness of Requests for Exclusion or written objections, and attach copies of any Requests for Exclusion and written objections received.

1 7.8.4. Workweek and/or PAGA Pay Period Challenges. The Administrator has the  
2 authority to address and make final decisions consistent with the terms of this  
3 Agreement on all Class Member challenges over the calculation of Workweeks  
4 and/or PAGA Pay Periods. The Administrator's decision shall be final and not  
5 appealable or otherwise susceptible to challenge.

6 7.8.5. Administrator's Declaration. Not later than fourteen (14) calendar days before the  
7 date by which Plaintiff is required to file the Motion for Final Approval of the  
8 Settlement, the Administrator will provide to Class Counsel and Defense Counsel  
9 a signed declaration suitable for filing in Court attesting to its due diligence and  
10 compliance with all of its obligations under this Agreement, including, but not  
11 limited to, its mailing of Class Notice, the Class Notices returned as undelivered,  
12 the re-mailing of any Class Notices, attempts to locate Class Members, the total  
13 number of Requests for Exclusion from Settlement received (both valid or invalid,  
14 timely or untimely), the number of written objections (both timely and untimely),  
15 and attach copies of any Requests for Exclusion and written objections received.  
16 The Administrator will supplement its declaration as needed or requested by the  
17 Parties and/or the Court. Class Counsel is responsible for filing the Administrator's  
18 declaration(s) in Court.

19 7.8.6. Final Report by Settlement Administrator. Within ten (10) calendar days after the  
20 Administrator disburses all funds in the Gross Settlement Amount, the  
21 Administrator will provide Class Counsel and Defense Counsel with a final report  
22 detailing its disbursements by employee identification number only of all payments  
23 made under this Agreement. At least ten (10) calendar days before any deadline  
24 set by the Court, the Administrator will prepare and submit to Class Counsel and  
25 Defense Counsel, a signed declaration suitable for filing in Court attesting to its  
26 disbursement of all payments required under this Agreement. Class Counsel is  
27 responsible for filing the Administrator's declaration in Court.  
28

1     **8.     CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.**

2             Based on its records, Defendant estimates that, as of December 1, 2023, there are 360 Class  
3     Members and 6,194 total Workweeks during the Class period. In the event that the actual total Workweeks  
4     exceeds this estimate by more than 10% (*i.e.*, if the actual total Workweeks is more than 6,813), then  
5     Defendant, at its sole discretion, has the option of either (i) increasing the GSA on a pro-rata basis equal to  
6     the percentage increase in the number of workweeks worked by the Class Members above 10% (for  
7     example, if the number of workweeks increases by 11%, the GSA will increase by 1%); or (ii) shorten the  
8     release period to an earlier date by which 6,194 workweeks plus an additional 619 workweeks are covered  
9     by the Class Period.

10    **9.     DEFENDANT’S RIGHT TO WITHDRAW.**

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

19    **10.    MOTION FOR FINAL APPROVAL.**

20            Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will  
21    file a motion for final approval of the Settlement that includes a request for approval of the PAGA  
22    settlement under Labor Code § 2699(*I*), a Proposed Final Approval Order, and a proposed Final Judgment  
23    (collectively, the “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to  
24    Defense Counsel not later than seven (7) calendar days prior to filing the Motion for Final Approval.  
25    Defense Counsel shall provide any input, edits, and/or response to these drafts not later than two (2)  
26    calendar days prior to Plaintiff’s deadline to file the Motion for Final Approval; if Defense Counsel does  
27    not provide any input, edits, and/or response to the drafts within this time frame, Plaintiff may proceed  
28    with finalizing and filing the Motion for Final Approval. Class Counsel and Defense Counsel will

expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

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

under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

**12. ADDITIONAL PROVISIONS.**

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

1 by a state or federal government agency. Each Party agrees to immediately notify each  
2 other Party of any judicial or agency order, inquiry, or subpoena seeking such information.  
3 Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly  
4 or indirectly, initiate any conversation or other communication, before the filing of the  
5 Motion for Preliminary Approval, with any third party regarding this Agreement or the  
6 matters giving rise to this Agreement, except to respond only that “the matter was  
7 resolved,” or words to that effect. This Paragraph does not restrict Class Counsel’s  
8 communications with Class Members in accordance with Class Counsel’s ethical  
9 obligations owed to Class Members.

10 12.2. No Promotion. Plaintiff and Class Counsel agree that they will not promote, market,  
11 advertise, or discuss publicly, including on any website or through social media, issuing  
12 any press releases, initiating any contact with the press, responding to any press inquiry, or  
13 having any communication with the press about this Action, including the facts and claims  
14 alleged therein, and/or the fact, amount, or terms of the Settlement. Nothing in this  
15 paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class  
16 Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

17 12.3. Integrated Agreement. Upon execution by all Parties and their respective counsel, this  
18 Agreement, together with its attached Exhibit A, shall constitute the entire agreement  
19 between the Parties relating to the Settlement, superseding any and all oral representations,  
20 warranties, covenants, or inducements made to, by, and/or between any Party.

21 12.4. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
22 represent that they are authorized by Plaintiff and Defendant, respectively, to take all  
23 appropriate action required or permitted to be taken by such Parties pursuant to this  
24 Agreement to effectuate its terms, and to execute any other documents reasonably required  
25 to effectuate the terms of this Agreement, including any amendments to this Agreement  
26 and/or Class Notice.

27 12.5. Cooperation. The Parties and their respective counsel will cooperate with each other and  
28 use their best efforts, in good faith, to implement the Settlement by, among other things,

modifying the Settlement Agreement and/or Class Notice, and submitting supplemental evidence and/or points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement and/or Class Notice that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

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

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

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

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

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

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

12.12. 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.

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

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 (3rd) business day after mailing by USPS mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Zachary M. Crosner (SBN 272295)

[zach@crosnerlegal.com](mailto:zach@crosnerlegal.com)

Brandon Brouillette (SBN 273156)

[bbrouillette@crosnerlegal.com](mailto:bbrouillette@crosnerlegal.com)

**CROSNER LEGAL, PC**

9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

Tel: (310) 496-5818

Fax: (310) 510-6429

To Defendant:

Shirley C. Wang (SBN 187635)

[swang@saberlaw.com](mailto:swang@saberlaw.com)

Ren M. Kuan (SBN 332674)

[rkuan@saberlaw.com](mailto:rkuan@saberlaw.com)

**SABER LAW GROUP**

101 Howard Street, Suite 400

San Francisco, California 94105

Telephone: (415) 278-1400

Facsimile: (415) 278-1404

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

12.18. 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 California Code of Civil Procedure § 583.330, the date to bring a case to trial under Code of Civil Procedure § 583.310 shall be extended for the entire period of this settlement process.

12.19. Full Defense. This Agreement may be pled as a full and complete defense to and may be used affirmatively, including as a basis for an injunction against, any action, suit or other proceeding that may be prosecuted, instituted, or attempted by Plaintiff or any other person, and/or in connection with the defense of any actual or threatened claim, lawsuit or proceeding.

**IT IS SO AGREED AND UNDERSTOOD BY:**

**Plaintiff & Class Representative:**

Dated: 12 / 19 / 2024

By: Arthur Quesada  
Arthur Quesada

**Defendant:**

Dated: \_\_\_\_\_

XPDEL, INC.

By: \_\_\_\_\_  
Manish Kapoor  
Chief Executive Officer

1 **AGREED AS TO FORM BY:**

2 **Plaintiff's Counsel:**

3 Dated: December 19, 2024

CROSNER LEGAL, PC

4  
5 By: 

Zachary M. Crosner  
Brandon Brouillette

*Attorneys for Plaintiff*

6  
7  
8  
9 **Defendant's Counsel:**

10 Dated: \_\_\_\_\_

SABER LAW GROUP

11  
12 By: \_\_\_\_\_

Shirley C. Wang  
Ren M. Kuan

*Attorneys for Defendant*

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

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12.19. Full Defense. This Agreement may be pled as a full and complete defense to and may be used affirmatively, including as a basis for an injunction against, any action, suit or other proceeding that may be prosecuted, instituted, or attempted by Plaintiff or any other person, and/or in connection with the defense of any actual or threatened claim, lawsuit or proceeding.

**IT IS SO AGREED AND UNDERSTOOD BY:**

**Plaintiff & Class Representative:**

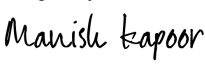
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Arthur Quesada

**Defendant:**

Dated: 12/19/2024  
\_\_\_\_\_

XPDEL, INC.

Signed by:  
  
By: \_\_\_\_\_  
Manish Kapoor  
Chief Executive Officer

**AGREED AS TO FORM BY:**

**Plaintiff's Counsel:**

Dated: \_\_\_\_\_ CROSNER LEGAL, PC

By: \_\_\_\_\_

Zachary M. Crosner  
Brandon Brouillette

*Attorneys for Plaintiff*

**Defendant's Counsel:**

Dated: December 19, 2024 SABER LAW GROUP

By: \_\_\_\_\_

Shirley C. Wang  
Ren M. Kuan

*Attorneys for Defendant*

# **Exhibit A**

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

---

***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 lawsuit against XPDEL, Inc. ("XPDEL" is used herein as a placeholder) for alleged wage and hour violations case name *Arthur Quesada v. XPDEL, Inc.*, case no 23CV031688, in the Alameda County Superior Court ("Action").

The Action was filed by a former XPDEL employee Arthur Quesada ("Plaintiff") who seeks payment of (1) back wages and other relief for a class of hourly-paid employees ("Class Members") who worked for XPDEL during the Class Period (April 21, 2019 through the earlier of date the Court grants preliminary approval or the date total workweeks worked by Class Members reaches 6,813 total workweeks); and (2) civil penalties under the Private Attorneys General Act of 2004 ("PAGA") for a group of hourly-paid employees ("Aggrieved Employees") who worked during the PAGA Period (April 21, 2022 through the earlier of date the Court grants preliminary approval or the date total workweeks worked by Class Members reaches 6,813 total workweeks).

The proposed settlement ("proposed Settlement" or "Settlement") is a global settlement of the Action, requiring XPDEL to fund Individual Class Payments to Participating Class Members for the class portion of the Settlement ("Class Settlement") and Individual PAGA Payments to Aggrieved Employees for the PAGA portion of the Settlement ("PAGA Settlement").

Based on the XPDEL's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ \_\_\_\_\_ (less withholding) and your Individual PAGA Payment is estimated to be \$ \_\_\_\_\_ (subject to a 1099).** The actual amount(s) you may receive likely will be different and will depend on a number of factors.

The above estimates are based on XPDEL's records showing that **you worked \_\_\_\_\_ workweeks during the Class Period and worked \_\_\_\_\_ pay periods during the PAGA Period.** If you believe that you worked more workweeks and/or pay periods during these periods, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully, as 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 proposed Settlement and how much of the proposed Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires XPDEL to make payments under the proposed Settlement and requires Class Members to give up their rights to assert certain claims against XPDEL.

If you worked for XPDEL during the Class Period, you have two basic options under the Class Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against XPDEL.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Class Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XPDEL. **If you are an Aggrieved Employee, you will still be subject to the PAGA Release (defined below) and will receive your Individual PAGA Payment, even if you opt out of the Class Settlement.**

**XPDEL 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**

|                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>You Don't Have to Do Anything to Participate in the Class Settlement</b>          | If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment. In exchange, you will give up your right to assert the wage claims against XPDEL that are covered by this Settlement (Class Member's Release).                                                                                                                                                                                                                                                                                                                  |
| <b>You Can Opt-out of the Class Settlement</b><br><br><b>The Opt-out Deadline Is</b> | 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.<br><br><b><u>If you are an Aggrieved Employee, you will receive your Individual PAGA Payment, even if you opt out of the Class Settlement.</u></b> |

|                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Participating Class Members Can Object to the Class Settlement</b></p> <p><b>Written Objections Must be Submitted by</b></p> | <p>All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the Class Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.</p> |
| <p><b>You Can Participate in the Final Approval Hearing</b></p>                                                                    | <p>The Court’s Final Approval Hearing is scheduled to take place on . 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 Class Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>                                                                                                                                                                                                                                                        |
| <p><b>You Can Challenge the Calculation of Your Workweeks</b></p> <p><b>Written Challenges Must be Submitted by</b></p>            | <p>The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period.</p> <p>Similarly, the amount of your Individual PAGA Payment depends on how many pay periods you worked at least one day during the pay period.</p> <p>The number of workweeks and pay periods you worked according to XPDEL’s records is stated on the first page of this Notice. If you disagree with this number, you must challenge it by . See Section 4 of this Notice.</p>                                                                                                                                                              |

## 1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former XPDEL employee. The Action accuses XPDEL of violating California labor laws by failing to pay minimum wages, overtime wages, and timely wages due upon termination and during employment; failing to provide meal periods, rest periods, sick time, vacation wages, accurate itemized wage statements, failing to produce employment records; failing to maintain accurate and complete payroll and related employment records, failing to reimburse necessary business expenses. Plaintiff is represented by attorneys in the Action: Crosner Legal, PC (“Class Counsel.”)

XPDEL 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 XPDEL or Plaintiff is correct on the merits. In the meantime, Plaintiff and XPDEL hired an experienced, neutral mediator in an effort to

resolve the Action by negotiating an to end the case by agreeing to 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 XPDEL 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, XPDEL does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the proposed Settlement is a good deal for you because they believe that: (1) XPDEL 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. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. XPDEL Will Pay \$175,000 as the Gross Settlement Amount (“Gross Settlement”).  
XPDEL has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the proposed Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, and the Administrator’s expenses. Assuming the Court grants Final Approval, XPDEL will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court become 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.
2. 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:
  - A. Up to \$58,333.33 (33.33% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$15,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
  - B. Up to \$10,000 to Plaintiff as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class, and providing a broad general release of all claims. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
  - C. Up to \$16,000 in PAGA Penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$4,000) and 75% to the Labor Workforce and Development Agency (\$12,000).
  - D. Up to \$10,000.00 to the Administrator for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections, with the exception of the PAGA Penalties amount.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period workweeks.
4. Taxes Owed on Payments to Class Members and Aggrieved Employees. Plaintiff and XPDEL are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to payments not attributable to wages, of which 40% will be allocated to settlement of claims for interest and 40% for penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (XPDEL will separately pay employer payroll taxes it owes on the Wage Portion.) The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

100% of the PAGA Penalties to Aggrieved Employees will be allocated as penalties and reported on IRS Form 1099.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and/or 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(s) will be automatically cancelled, and the monies provided to you will be redistributed to the Parties’ chosen *cy pres* recipient, East Bay Community Law Center. If the monies represented by your check(s) are redistributed to the East Bay Community Law Center you will not be able to recover your monies.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than \_\_\_\_\_, 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 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 XPDEL.
7. 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 XPDEL have agreed that, in either case, the Settlement will be void:

XPDEL will not pay any money and Class Members will not release any claims against XPDEL.

8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Settlement Administration (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.
9. Participating Class Members’ Release. After the Judgment is final and XPDEL 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 Class 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 XPDEL or related entities for wages based on Class Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and on behalf of their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, transactions, or occurrences that occurred during the Class Period and that were alleged, or reasonably could have been alleged based on the facts contained, in the Operative Complaint. Except as set forth in Section 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.

10. PAGA Release or Release by LWDA. Plaintiff, as a proxy or agent of the LWDA, hereby releases all of the PAGA claims stemming from the claims, transactions, or occurrences for all Aggrieved Employees that occurred during the PAGA Period that were alleged based on the facts contained in the Operative Complaint and Plaintiff’s PAGA Notice/

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. 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.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing the 25% employee-portion of the PAGA Penalties 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.
3. Workweek and Pay Period Challenges. The number of Class workweeks and PAGA pay periods you worked during the Class Period and PAGA Period, as recorded in XPDEL’s records, are stated in the first page of this Notice. You have until            to challenge the

number of workweeks and/or pay periods. 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 XPDEL's calculation of workweeks and/or pay periods based on XPDEL's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XPDEL's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

## 5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a check to every Participating Class Member (i.e., every Class Member who doesn't opt-out).

Aggrieved Employees. The Administrator will send, by U.S. mail, a check to every Aggrieved Employee, regardless of whether they opt out of the Class Settlement.

The Administrator may send a single check combining the Individual Class Payment and the Individual PAGA Payment. **Your check(s) will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

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

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 *Quesada v. XPDEL, Inc.* and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by \_\_\_\_\_, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

**If you are an Aggrieved Employee, the LWDA will still be bound by the PAGA Release regardless of whether you opt out of the Class Settlement. Aggrieved Employees cannot opt out of the PAGA Settlement.**

## 7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Class Settlement. Before deciding whether to object, you may wish to see what Plaintiff and XPDEL 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 (2) a Motion for Fees, Litigation

Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website (url) or the Court's website (url)

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award 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 \_\_\_\_\_.** 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 *Quesada v. XPDEL, Inc.* and include your name, current address, telephone number, and approximate dates of employment for XPDEL 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 \_\_\_\_\_ at (time) in Department 23 of the Alameda Superior Court, located at the Administration Building, 1221 Oak St., Oakland, CA 94612. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website (<https://publicrecords.alameda.courts.ca.gov/PRS/>) using the Case No. **23CV036357** for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator'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 XPDEL and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to \_\_\_\_\_'s website at \_\_\_\_\_.

You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Alameda County Superior Court website, known as 'eCourt Public Portal' at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click 'Search' tab at the top of the page, then select the Document Downloads link, enter the case number and click 'Submit.' Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings, including the René C. Davidson Courthouse and the Hayward Hall of Justice.

To view the Register of Actions, go to the 'Search' tab at the top of the page, then select the 'Search by Case Number' link, enter the case number 23CV036357, select 'Search' and click the link to the case name. You will see the Register of Actions and more.

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

Class Counsel:

Name of Attorney: Zachary Crosner and Brandon Brouillette

Email Address: [zcrosner@crosnerlegal.com](mailto:zcrosner@crosnerlegal.com); [bbrouillette@crosnerlegal.com](mailto:bbrouillette@crosnerlegal.com)

Name of Firm: Crosner Legal, PC

Mailing Address: 9440 Santa Monica Blvd., Suite 301, Beverly Hills, CA 90210

Telephone: (866) 276-6429

Settlement Administrator:

Name of Company:

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, then your unclaimed funds will have been distributed to the chosen *cy pres* recipient, East Bay Community Center, and your check will not be reissued.

**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**



Los Angeles Office  
9440 Santa Monica Blvd.  
Beverly Hills, CA 90210

Kiara Bramasco, Esq.  
[kiara@crosnerlegal.com](mailto:kiara@crosnerlegal.com)  
direct: (424) 335-5236  
office: (866) 276-7637  
fax: (310) 510-6429

---

March 25, 2024

**VIA PAGA ONLINE FILING ONLY:**

California Labor & Workforce  
Development Agency  
ATTN: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
[PAGAFilings@dir.ca.gov](mailto:PAGAFilings@dir.ca.gov)

**VIA U.S. CERTIFIED MAIL:**

Incorp Services, Inc.  
Agent for Service of Process for:  
**XPDEL Inc.**  
Attn CA Registered Corporate (1505) Agent  
Authorized Employee(s): Steven Pickett, Chris  
Duque, Jourdan Cerillo and Nichole Wheeler  
5716 Corsa Ave Suite 110  
Westlake Village, CA 91362

Tamara L. Harper  
Agent for Service of Process for:  
**Advatix, Inc.**  
141 Duesenberg Drive  
Suite 7b  
Westlake Village, CA 91362

**XPDEL, Inc. and  
Advatix, Inc.**  
Attn: Human Resources / Legal Department  
2625 Townsgate Road  
Suite #330  
Westlake Village, CA 91361

**NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM**

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To: California Labor and Workforce Development Agency; XPDEL Inc. and Advatix, Inc.  
Date: March 25, 2024  
Subject: *Arthur Quesada v. XPDEL Inc., et. al.*

---

**Introduction**

This office represents PLAINTIFF, Arthur Quesada (hereinafter "PLAINTIFF") in connection with PLAINTIFF's claims under the California Labor Code. PLAINTIFF was, at all relevant times

herein mentioned, an employee of the following entities and individual managing agents of said entities: XPDEL Inc. and Advatix, Inc. (hereinafter, these entities and their managing agents are collectively referred to as “DEFENDANTS”). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”) and on behalf of all current and former exempt employees employed by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of PLAINTIFF’s claims against DEFENDANTS. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State.

This NOTICE also serves to demonstrate PLAINTIFF’s reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF’s claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF’s intent to seek civil penalties against DEFENDANTS. Under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, a PAGA representative has authority to

seek penalties for all known violations committed by the employer – regardless of whether the representative experienced all violations personally. *Id.* at 760-761. Moreover, under *Johnson v. Maxim Healthcare Servs., Inc.*, (2021) 66 Cal. App. 5th 924, 929, an employee may pursue a claim under PAGA even when that employee’s individual claim is time-barred.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 226, 226.7, 233, 234, 245-246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, and all applicable Wage Orders.

**The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES**

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS, and each of them, maintain the same agent for service of process and/or principal business address and provided to the California Secretary of State and/or share some of the same attorneys and human resources personnel to oversee employment-related matters. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

### **Individual Liability Under Labor Code § 558.1**

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

### **General Information**

DEFENDANTS own, operate, manage and/or staff its employees to work at the facilities and/or other location(s) in California, including but not limited to the locations and/or facilities in Hayward, California. DEFENDANTS, through its various locations, serve the supply chain and/or logistics industry.<sup>1</sup> Although DEFENDANTS may operate successful companies or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF is a former employee of DEFENDANTS. PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of delivery associate and/or a similar title(s) and/or position(s) from in or around May 2021 through on or around November 24, 2021. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' Hayward, California location(s). PLAINTIFF's job duties included but were not limited to loading and unloading vending supplies and/or other supplies and/or merchandise and driving a delivery van and/or box truck weighing less than 10,000 pounds loaded. PLAINTIFF regularly worked at least eight (8) to fourteen (14) hours per day, at least five (5) to six (6) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked.

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<sup>1</sup> See <https://www.xpdel.com/> and <https://www.advatix.com/>. Last visited on March 25, 2024.

Among other things, DEFENDANTS (1) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (3) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (4) failed and continue to fail to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal and/or rest breaks, and/or compensate PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (5) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (6) failed and continue to fail to timely pay wages to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (7) failed and continue to fail to reimburse PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of DEFENDANTS; Further descriptions of the above-mentioned violations and others are explained below.

### **Labor Code Violations**

**Meal Period Violations:** California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4<sup>th</sup> 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10<sup>th</sup> hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.* Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code

§ 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, PLAINTIFF was consistently required to work through his meal periods, take a meal period that was less than a full thirty minutes in length and/or was required to take his meal period late (i.e. after the fifth hour of work), due to lack of relief workers, the need to meet delivery deadlines, respond to work-related communications and/or complete other work tasks as well as due to pre-shift off-the-clock work that was not taken into account by DEFENDANTS when scheduling any meal periods.

For example, during most of PLAINTIFF’s shifts, PLAINTIFF was required to clock out for purported meal periods but to continue working due to explicit instruction from DEFENDANTS to do so, lack of relief workers, the need to complete deliveries/pickups in a timely manner, meet delivery/pickup windows and/or complete other work tasks.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES working in DEFENDANTS’ facilities were also forced to take late meal periods, short meal periods, interrupted meal periods and/or skip meal periods completely due to their need to complete their job duties and/or meet supply demands/deadlines.

Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to DEFENDANTS’ premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet DEFENDANTS’ goals and expectations.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS’ control during unpaid meal periods.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take into account when scheduling meal periods for NON-EXEMPT

AGGRIEVED EMPLOYEES. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Based on information and belief, per DEFENDANTS' uniform policy and practice, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite DEFENDANTS' failure to provide lawful meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end times of PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to DEFENDANTS' premises), despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive lawful meal periods.

Moreover, based on information and belief, DEFENDANTS failed to keep accurate records of the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on information and belief, to the extent meal period were recorded, DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES as to the timing and duty-free nature of meal periods. Based on further information and belief, DEFENDANTS did not have a compliant written meal break policy, nor did DEFENDANTS have any sort of compliant policy in practice. Liability for the NON-EXEMPT AGGRIEVED EMPLOYEES can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration,

including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.<sup>2</sup> DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

**Rest Period Violations:** California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4<sup>th</sup> 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5<sup>th</sup> 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp.*,

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<sup>2</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Inc., (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, DEFENDANTS did not have a compliant written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in practice.

For example, during the Class Period, PLAINTIFF was rarely, if ever, afforded a legally compliant rest period due to the need to complete deliveries in a timely manner and/or meet delivery windows, provide status updates to DEFENDANTS regarding deliveries and/or communicate with DEFENDANTS via phone calls and/or text message and/or complete other related work tasks. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES working in DEFENDANTS’ facilities were similarly required to work through their owed rest periods due to the need to meet supply demands/work deadlines, respond to work-related communications and/or complete other work tasks.

Moreover, based on information and belief, DEFENDANTS failed to authorize and permit rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent rest periods were provided at all, limited NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving, in violation of California rest period law. DEFENDANTS’ failure to communicate that the rest period is a net ten minutes deprived NON-EXEMPT AGGRIEVED EMPLOYEES of their rights to a full rest period, as such as policy only relieves NON-EXEMPT AGGRIEVED EMPLOYEES from their workstation for ten minutes to travel to and from a rest area and be back at the workstation by the end of that ten minutes.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES’ rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring NON-EXEMPT AGGRIEVED EMPLOYEES to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, DEFENDANTS failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS’ control during rest periods.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.<sup>3</sup>

**Minimum Wage Violations:** “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 attorneys’ fees, and costs of suit.” Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, “Every employer shall pay to each employee .... not less than the applicable minimum wage for all hours worked in the payroll period...” The applicable Wage Order 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.” *See* §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer’s failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee’s

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<sup>3</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); and All applicable IWC Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, “in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon...” *Cal. Lab. Code* § 1194.2.

DEFENDANTS failed to compensate PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of DEFENDANTS’ automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, DEFENDANTS implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES were subject to DEFENDANTS’ control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all wages owed.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS’ policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, as explained below, PLAINTIFF was required to work through his unpaid meal periods during most shifts he worked due to the need to complete deliveries and/or pickups and/or complete other work tasks, yet DEFENDANTS performed an automatic meal break deduction of at least thirty minutes per shift despite DEFENDANTS having actual and/or constructive knowledge that PLAINTIFF was consistently forced to work through his meal periods, resulting in DEFENDANTS’ failure to compensate PLAINTIFF for all hours worked and the underpayment of minimum wages and overtime wages owed to PLAINTIFF.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS’ policy and/or practice of rounding time entries or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations in DEFENDANTS’ facilities and/or their assigned vehicles at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment/tools and/or safety gear and/or perform pre-trip vehicle and/or equipment inspections prior to their scheduled shift and/or prior to clocking in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS did not compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all time spent donning and doffing personal protective equipment, safety equipment and/or uniforms/work clothing (e.g., gloves, reflective vests, hard hats and/or face masks) during meal periods before the start of a scheduled shift, and after completing a scheduled shift.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other work tasks outside of their reported work time, before clocking in for the start of their shift and/or after clocking out for the end of their shift and/or otherwise outside of their scheduled shift times resulting in DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of minimum wages and overtime wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete off-the-clock work outside of scheduled shifts due to, including but not limited to, work-related phone calls and/or messages they received to their personal phones and were required to respond to, including but not limited to, communications from supervisors and/or other NON-EXEMPT AGGRIEVED EMPLOYEES regarding scheduling and/or other work tasks, resulting in the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Moreover, based on information and belief, at times, DEFENDANTS' electronic time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system and/or wait for the system to boot prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not compensated and resulted in unpaid minimum wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by DEFENDANTS. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, DEFENDANTS implemented a time-rounding system that as applied systematically deprived PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by DEFENDANTS would almost always, if not always, result in understating actual compensable work time. DEFENDANTS' failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-

EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

DEFENDANTS' failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject DEFENDANTS, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.<sup>4</sup>

**Overtime Violations:** California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code §510; IWC Wage Order All applicable IWC Wage Orders §3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a work week. *Ibid.*

Based on information and belief, DEFENDANTS violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, DEFENDANTS' automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the-clock/unpaid work completed during meal periods and/or time spent restricted to DEFENDANTS' premises and/or subject to DEFENDANTS' control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as

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<sup>4</sup> See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

overtime wages owed to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, DEFENDANTS failed and continue to fail to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, DEFENDANTS failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.<sup>5</sup>

**Sick Pay Violations:** Throughout the relevant time period, DEFENDANTS failed to provide proper paid sick leave to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES. DEFENDANTS either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Upon information and belief, DEFENDANTS further failed and continue to fail to comply with Labor Code section 246, by failing to provide PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the

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<sup>5</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); All applicable Wage Orders, §20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

DEFENDANTS unlawfully retained and continue to retain paid sick leave that should have been paid but was not, as a result of DEFENDANTS' failure to properly institute a paid sick leave program.

On information and belief, PLAINTIFF alleges that all of these practices were experienced and continue to be experienced by other NON-EXEMPT AGGRIEVED EMPLOYEES.

PLAINTIFF requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to DEFENDANTS' sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. PLAINTIFF requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

**Wage Statement Violations:** California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve NON-EXEMPT AGGRIEVED

EMPLOYEES of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by DEFENDANTS failed to list the inclusive dates of the pay period for which the NON-EXEMPT AGGRIEVED EMPLOYEE or EXEMPT AGGRIEVED EMPLOYEE is being paid.

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS' failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements. As described herein, based on information and belief, DEFENDANTS also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, wage statements issued by DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Moreover, based on information and belief, DEFENDANTS issued wage statements to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.<sup>6</sup>

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<sup>6</sup> See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

**Final Pay Violations:** Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES’ final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates.

Based on further information and belief, DEFENDANTS failed to timely provide all owed wages immediately upon discharge of employment. Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES experienced breaks in employment caused by DEFENDANTS whereby NON-EXEMPT AGGRIEVED EMPLOYEES would not be called in for work for longer than a single pay period due to including but not limited to DEFENDANTS’ lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.<sup>7</sup>

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<sup>7</sup> (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

**Business Expense Violations:** California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

California law also requires employers to reimburse employees for automobile expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

Based on information and belief, PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including but not limited to, the purchase and/or maintenance of uniforms/work clothing/personal protective/safety gear and/or the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES’ personal mobile phone, internet and/or data usage for work related purposes, including but not limited to, to receive and respond to work related messages and/or phone calls. For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to receive/make work-related calls and/or messages from/to their personal cell phones/mobile devices but DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with any reimbursement and/or the legally mandated reimbursement for DEFENDANTS’ business use of their personal cell phones/mobile devices.

For example, DEFENDANTS required PLAINTIFF to download and regularly use an employee timekeeping application on his personal cell phone/mobile device but did not provide PLAINTIFF with the legally mandated reimbursement for these business expenses, including but not limited to, reimbursement for increased data plan charges and/or other expenses incurred from DEFENDANTS' business use of his cellphone.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for additional business expenses, including but not limited to, hand tools/equipment and/or cost of gas, costs of repairs, tolls/fines and/or other work-related fees/fines, incurred as a direct consequence of the discharge of their assigned job duties without receiving any and/or full reimbursement from DEFENDANTS for these expenses.

On information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were required to use their personal vehicles for DEFENDANTS' business purposes, including but not limited to, for driving between and/or around DEFENDANTS' job sites/locations/facilities and/or for otherwise carrying out the duties assigned by DEFENDANTS without receiving any and/or full reimbursement from DEFENDANTS for the business use of their personal vehicles. As such, DEFENDANTS failed to compensate NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of DEFENDANTS.

As a pattern and practice, DEFENDANTS regularly failed to reimburse and indemnify NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were entitled to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties assigned by DEFENDANTS.

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

### **Conclusion**

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.  
Crosner Legal, PC  
9440 Santa Monica Blvd., Ste. 301  
Beverly Hills, CA 90210  
Main: 310.496.5818  
Fax: 310.510.6429  
Email: [kiara@crosnerlegal.com](mailto:kiara@crosnerlegal.com)

Thank you for your attention to this matter.

Best Regards,



Kiara Bramasco, Esq.  
CROSNER LEGAL, PC

## PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

### Case Information

**Case Number:** LWDA-CM-1018480-24  
**Plaintiff for PAGA Case:** Arthur Quesada  
**Filer/Attorney for PAGA Case:** Zachary Crosner  
**Law Firm for PAGA Plaintiff:** Crosner Legal, PC  
**Employer:** XPDEL, Inc.  
**Date Case Received:**  
**Filer for Employer:**  
**Employer Filer Firm:**  
**Court Type:**  
**Court Name:**  
**PAGA Court Case Number:**  
**Violation Type:**  
**Related BOFE Case:**

### Attachments

| Attachment Name                                                    | Description                                         | Date Submitted    | Type        |
|--------------------------------------------------------------------|-----------------------------------------------------|-------------------|-------------|
| PAGA Notice Submitted on 03/25/2024 01:52:24 PM by Zachary Crosner | 2024.03.25-Quesada (v XPDEL)-PAGA Notice(final).pdf | 3/25/2024 8:52 PM | PAGA Notice |

# **EXHIBIT**

**3**