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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

GINA DILLARD, on behalf of all other Aggrieved Employees only; Plaintiff, vs. HOMESITE SERVICES, INC., a California Stock Corporation, and DOES 1 through 50, inclusive, Defendants..	Case No.: CIVSB2418616 Assigned for All Purposes to: Hon. Dept. DECLARATION OF SEPIDEH ARDESTANI IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT Date: September 17, 2025 Time: 9:00 a.m. Dept.: S22:

DECLARATION OF SEPIDEH ARDESTANI

I, SEPIDEH ARDESTANI, Declare:

1. I am an attorney duly licensed to practice in California and before this Court, and I am a partner with Crosner Legal, PC, counsel of record for plaintiff Kenneth Davis. I make this declaration in support of Plaintiffs' Motion for Approval of Settlement under the Private Attorneys General Act. If called to testify as to the within facts, I would and could competently do so.

2. Attached hereto as Exhibit 1 is a true and correct, fully-executed copy of the Parties' PAGA Settlement Agreement (the "Settlement Agreement"). Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff Davis's notice letter to the Labor & Workforce Development Agency ("LWDA") and proof of submission. Attached hereto as Exhibit 3 is proof of submission of the proposed settlement to the LWDA via its online portal.

3. I am unaware of any other cases or matters that may be related to this matter or that may have overlapping claims or classes, other than the 2 related matters being resolved in this settlement.

BACKGROUND

4. Defendant Homesite is a residential, commercial, and retail service company combining that provides new home interior design, flooring, cabinetry, and quality craftmanship" in both Northern and Southern California. Plaintiff Dillard was formerly employed by HomeSite as a non-exempt hourly employee from about June 2023 to March 2024, as a customer service representative for the tile department out of HomeSite's corporate offices in Livermore, California. Plaintiff Davis also was employed by HomeSite as a non-exempt hourly employee, and worked as a warehouse associate for HomeSite's San Bernardino, California location from around 2018 to November 2023.

5. After notice to the LWDA and Defendant, and exhausting administrative remedies Plaintiff Davis filed a complaint against Homesite on June 7, 2024 seeking PAGA civil penalties for, inter alia, the following alleged wage and hour violations: (a) failure to pay all wages due, including minimum and overtime wages; (b) failure to provide meal and rest periods; (c) failure

to provide complete and accurate wage statements; (d) failure to reimburse expenses, and (e) failure to pay wages due on separation of employment. Plaintiff Dillard filed the matter on behalf of himself and on behalf of the Aggrieved Employees defined to include all individuals employed by Homesite as non-exempt employees in California during the relevant PAGA time frame of March 27, 2023 to April 15, 2025. On July 1, 2024, and after notice to the LWDA and Defendant and exhausting administrative remedies, Plaintiff Davis filed a separate PAGA-only complaint alleging substantially similar Labor Code violations.

6. Once the cases were at issue, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and eventually agreed to attempt an early global mediation. They also agreed to and did informally exchange information to permit both sides to evaluate Plaintiffs' allegations. Through this informal discovery, Defendant provided Plaintiffs with information including, inter alia, Plaintiffs' personnel files, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of about 15% of the Aggrieved Employees, and relevant policy documents regarding Defendant's time keeping and reporting policies and meal and rest break policies, among other pertinent materials.

7. In April 2025, the Parties mediated both cases with Chris Barnes, Esq., a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendant's defenses, and the Parties' data analyses and conclusions based on data provided by Defendant. After a contentious day of negotiations, the Parties reached agreement and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. Finally, in order to fully effectuate the tentative global settlement, Plaintiff Dillard filed a First Amended Complaint on, adding Plaintiff Davis as a party-plaintiff and otherwise conforming the operative complaint's allegations to the terms of the settlement.

SUMMARY OF SETTLEMENT TERMS

8. Under the settlement, Defendant will pay a non-reversionary settlement amount of $575,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than $4,000), a modest service award to each Plaintiff, and reasonable attorney's fees and costs (Plaintiffs' counsel request 1/3 of the GSA ($191,666.67) in fees and costs of $24,776.68, and Plaintiffs each request a modest service award of $10,000.00). After payment of settlement administration costs, Plaintiffs' service awards, and reasonable attorney's fees and costs from the GSA, Plaintiffs presently estimate about $334,556.65 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $250,917.49) will go to the LWDA, and the remaining 25% (about $83,639.16) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period of March 27, 2023 to April 15, 2025. I estimate the average award at about $217 per individual, while awards are estimated to range from about $6.29 to $340.

9. The Parties propose using Simpluris, Inc. as the Settlement Administrator. Phoenix has extensive experience administering PAGA settlements, and has agreed to cap its fees at $4,000. Homesite will fund the GSA within 21 days of the Effective Date, and within 14 days of funding Simpluris will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Homesite's records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund.

10. The California Supreme Court has explained that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil

penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to be "binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." The Settlement Agreement protects the rights of the Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement Agreement specifically provides the Release is inapplicable to any claims other than those brought under PAGA. [Ardestani Decl., ¶ 10.]

THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL

11. Plaintiffs first contend Defendant failed to pay at least the applicable minimum wage for all hours worked in that Defendant "synthetically" paid employees based on their scheduled hours instead of the actual hours worked, resulting in "off the clock" work that went uncompensated. Here, Plaintiffs' experts' analysis of the time records showed that 97% of shifts started or ended on the whole-hour or 30-minute intervals, suggesting a policy to generate synthetic entries tied to scheduled start/stop times rather than the actual hours of work. As are result of this policy, Plaintiffs allege employees typically lost as much as 15 minutes per shift in pay due working "off the clock."

12. Plaintiffs next contend Defendant failed to pay all wages due because it did not pay overtime and sick pay wages based on the correct "regular rate" of pay, and instead paid for overtime based on employees' base hourly wage without accounting for bonuses and other non-discretionary pay. Here, Plaintiffs contend employees regularly received modest (i.e., $150-300) non-discretionary bonuses for meeting various goals and quotas, and this non-discretionary income was not factored into the "regular rate" of pay. Per Plaintiffs, this resulted in the underpayment of overtime for all pay periods where an employee both worked overtime hours and earned any kind of non-discretionary bonus pay.

13. On the meal break claims, Plaintiffs allege that even though Defendant's written meal and rest period policies seem facially compliant, as applied there were substantial "de facto" violations for lunches that either were missed completely, untimely, or cut short. Per Plaintiffs'

experts' review, the data suggested about at least 30.4% violation rate for such missed or non-compliant breaks, as well as a complete absence of meal period premium payments in the pay records. On top of the "de facto" violations, Plaintiffs also contended Homesite had a policy that required employees to record lunches at exactly 30 minutes regardless of how long the lunch break actually lasted or whether it was interrupted by work.

14. On the rest break claims, Plaintiffs likewise allege employees did not receive all required rest breaks and argued that Plaintiffs and other Aggrieved Employees regularly worked through rest periods in order to meet the demands of their jobs.

15. On the expense reimbursement claim, Plaintiffs and other employees had to use personal cell phones for work-related reasons, and estimate that around 87% of the employees regularly used their own phones on the job. An employer must reimburse employees for use of personal devices, and if the employee has an unlimited monthly plan then the employer must reimburse an amount that equates to the employee's percentage of use for work.

16. Plaintiffs also bring claims derivative of the foregoing claims, including a derivative wage statement claim based on the failure to pay all wages due, and failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203.

17. For mediation, Homesite indicated it employed approximately 386 non-exempt employees in California during the relevant time frame, and these individuals worked approximately 13,330 pay periods during that time. Based on the data provided by Defendant, Plaintiffs estimated Defendant's maximum PAGA exposure at approximately $6,691,800, including around $1,333,000 on the unpaid wage/off the clock claim, approximately $13,300 on the unpaid wage/regular rate claims, about $1,333,000 on the meal period claims, $1,333,000 on the rest period claims, $1,333,000 on the wage statement claims, $1,333,000 on the expense reimbursement claims, and about $13,500 in civil penalties for failing to timely pay wages on separation of employment.

18. On Plaintiffs' unpaid wage/off the clock claim, Defendant argued its time keeping policies accurately tracked and paid for all hours worked by its employees, and did not deprive class members of compensable hours worked. Brisbane also emphasized that is policies strictly

prohibited any "off the clock work," that employees were not required to arrive at work early or otherwise work "off the clock," and to the extent it happened it was done with management's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Defendant further argued proving this claim would require hundreds of individualized inquiries and would be impossible to resolve on a representative basis.

19. In response to Plaintiffs' unpaid wage/rounding claim, Defendant argued that the bonuses Plaintiffs claim should have been included in the "regular rate" actually were discretionary and therefore were not included in the regular rate calculation. Consequently, per Defendant, these "bonuses" did not influence the employees' regular rate of pay when calculating the overtime rates.

20. On the meal break claims, Homesite offered multiple defenses. First, it emphasized it authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods as reflected in its time records. Defendant further argued that even to the extent meal or rest breaks were missed or arguably non-compliant, it was in violation of company policy and aberrational, and would require significant individual inquiries to determine the reasons underlying any such alleged violations and whether it was by employee choice or some other reason. Thus, per Defendant, any trial on this issue would be unmanageable because of these individualized issues.

21. As with meal breaks, Defendant argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks, that such breaks were a net 10 minutes and otherwise fully compliant, and employees could leave the premises. Further, per Defendant, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since the number of instances an employee missed a rest break would have to be tested on a case by case basis to determine compliance.

22. For Plaintiffs' expense reimbursement claim, Homesite emphasized its written policies prohibited employees from using their own phones while on the clock and working. Beyond that, Defendant argued there were be no need for employees to use their phones while working, and if they did it was purely for personal convenience and therefore it was not reimbursable as a "necessary" business expense.

23. Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties). Both claims, since they are entirely derivative, will rise or fall along with the primary claims, in addition to being subject to "good faith" and other defenses available to Defendant. Accordingly, Plaintiffs had to discount the value of these claims significantly in light of these multiple potential defenses. Defendant also contended a substantial discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize Defendant multiple times for the same violation.

24. Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). I am aware that several state and federal courts in California have applied significant reductions to PAGA civil penalties even after plaintiffs prevailed on the merits, which we accounted for in evaluating the proposed settlement.

25. Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have derailed Plaintiffs' case. And Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In additional to its merits defenses and arguing trial would be unmanageable, Defendant also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties.

26. Although Plaintiffs and their counsel believe they could have prevailed, there was

no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both liability and maximum penalties on all claims for every single pay period at issue, which outcome, for the reasons discussed, is unlikely. Given Defendant's various procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable.

SUBMISSION TO THE LWDA

27. Plaintiffs timely provided the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing via the LWDA's online portal. Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement.

PLAINTIFFS' ENHANCEMENTS

28. Here, the Settlement Agreement provides for an enhancement of up to $10,000.00 to each Plaintiff. The requests are reasonable given the risks they undertook on behalf of the Aggrieved Employees and State. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent employees, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As stated in their respective declarations filed herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments.

THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

29. Under the terms of the Settlement Agreement, co-counsel and I respectfully

request an award of attorney's fees equal to 1/3 of the total settlement amount, or $191,666.67. A one-third common fund attorney fee award is consistent with what courts have awarded counsel in other representative actions, and awarding attorney's fees of one-third of a gross settlement amount is favored by California courts when a fund established for the common benefit of others is involved, such as here. Plaintiffs' respective counsel will not split any attorney's fees awarded on a 50/50 basis, and both plaintiffs have been informed of the proposed fee split and consented thereto in writing.

30. There are several additional factors why I believe that the Court should award one-third of the common fund as a reasonable attorney's fee. First, counsels' efforts resulted in a common fund settlement amount of $575,000.00, which for the reasons explained, is fair and reasonable in light of the risks/defenses Defendant raised in litigation and threatened to raise at trial and in post-trial appeals. Further, this is a significant sum that furthers the purposes underlying PAGA such as augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring future non-compliance. Moreover, this result was achieved by the work and success of this office and our co-counsel, who negotiated the settlement after extensive preparation, informal discovery, and an adversarial mediation.

31. Second, Plaintiffs faced significant risks going forward with the litigation. As discussed above, Defendant raised various defenses to their claims, anyone of which, if successful, could have decimated Plaintiffs' case. Plaintiffs faced risky legal issues going forward with this litigation, and it would have taken several more years to realize any recovery in this action along with the possibility of post-trial appeals,

32. Third, we are experienced class and representative action litigators, and have achieved several approved PAGA settlements. This experience and expertise, combined with the high quality of work performed, resulted in the settlement achieved in this case.

33. I graduated from the University of California, Los Angeles in 2004 with a bachelor's in science, obtained my J.D. from Whittier Law School in 2009, and earned a masters in law from Santa Clara University School of Law in 2010. I have been a member of the California Bar since 2010 and have extensive experience in employment matters, including

wage and hour litigation. I worked as a wage and hour class action attorney at Gaines & Gaines, APLC from 2012 through 2021 and, prior to joining Gaines & Gaines I worked at Sirkin Law Group as a litigation associate from 2010-2012. I joined Crosner Legal in December 2021 and I am a Partner. I have solely handled employment, wage and hour class actions, and PAGA lawsuits for some 13 years. I was selected for 2020-2021 by Super Lawyers as a "Southern California Rising Star" for employment and labor law.

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

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

36. Mr. Crosner currently is an executive board member of the Wage and Hour Committee and the Legislative Committee for the California Employment Lawyers Association; a member of the Grassroots Advocacy Team for the National Employment Lawyers Association; Wage and Hour Committee member and Class Action Committee member for the National Trial Lawyers; a member of the American Association for Justice; and member of the

Pound Civil Justice Institute. He was selected for 2018-20 by Super Lawyers as a "Southern California Rising Star" for employment and labor law.

37. Jamie Serb graduated from the University of California, San Diego in 2004 and graduated from California Western School of Law in 2013, and has been a member of the California Bar since 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate attorney. She has handled wage and hour class actions and PAGA lawsuits for some 10+ years and has assisted in obtaining millions of dollars for employees during her years of practice.

38. Branden Hamilton obtained her undergraduate degree from UCLA in 2004, and her law degree from George Washington University in 2007. She has been affiliated with my firm since 2017 and became Of Counsel with Crosner Legal in 2019, and her practice focuses almost exclusively on wage and hour class and representative actions. She has spent her entire career representing plaintiffs in employment litigation, including several years as an associate at well-known plaintiff's firm Carlin & Buchsbaum.

39. Kiara Bramasco received her undergraduate degree, magna cum laude, from Loyola Marymount University in Political Science, and then received her JD from Loyola Law School in 2018. She then spent several years with well-known plaintiff's firm Moss Bollinger, first as a law clerk and then as an associate, where her practice focused on employment law, particularly wage and hour class action and PAGA litigation. She joined Crosner Legal in 2021 and is head of the Firm's Pre-Litigation Department.

40. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class action settlements while serving as lead class counsel in recent years, including but not limited to a $1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a $4.1 million wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty. Super Ct.)); a $1.35 million wage and hour class action settlement in 2017

(*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a $1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a $1.3 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a $1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.), a $1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a $7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a $2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.,* Case No. LS029737 (Los Angeles Cty. Super. Ct.));.a $2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a $1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No. 21CV382467 (Santa Clara Cty. Super. Ct.)), a $1.4 million wage and hour class action settlement in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino Cty. Super. Ct.), a $2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v. Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a $2.5 million wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No. CIVDS1931464 (San Bernardino Cty. Super. Ct.); $1.015 million wage and hour class action settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco Cty. Super. Ct); and a $1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v. Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.); a $1.5 million wage and hour class action settlement in *McKinnie v. Iron Mountain*, Case No. 21STCV05707 (Los Angeles Cty. Super. Court); a $1.3 million wage and hour class action settlement in *Ellsworth, et al. v. Hallcon*, Case No. 20STCV06618 (Los Angeles Cty. Super. Court); a $1.925 million wage and hour class settlement in 224 in *Lo v. Cyberpower, Inc.*, Case No. 21STCV31479 (Los Angeles Cty. Super. Ct); a $1.19 million dollar wage and hour class action settlement in 2024 in *Herrera v. Signature Flight Support LLC*, Case No. 22STCV18367 (Los Angeles Cty. Super. Ct.); a $2.65 million wage and hour class action settlement in 2024 in *Shilevinatz v. Airport Terminal Services*, Case No. CIVSB2229072 (San Bernardino Cty. Super Ct.) and a $1 million wage and hour class action settlement in 2025 in *Hernandez v YZER, LLC*, Case No. 23CV025345 (Alameda Cty. Superior Ct).

41. Based upon the qualifications and experience set forth above, reasonable hourly rates include Zach Crosner $800/hour, Jamie Serb $750/hour, Sepideh Ardestani $700/hour, Kiara Bramasco $650/hour, and Branden Hamilton $600/hour.

42. I request the Court apply the above hourly billing rates in this case, as it reasonable in the California legal market for attorneys handling wage and hour class and PAGA actions. I have personal knowledge of the hourly rates charged by a number of plaintiff-side wage and hour class action firms in major California legal markets for partner-level attorneys with experience comparable to mine. These rates have ranged from $750 to $900 per hour for calendar years 2018-2023. Some examples include attorney Ron Makarem of Makarem & Associates in Los Angeles, with 28 years of experience, $900/hour (2023), Matthew Matern of Matern Law Group in Los Angeles, with approximately 26 years of experience $850/hour (2018); Craig Ackermann of Ackermann & Tilajef, PC in Los Angeles with approximately 25 years of experience $850/hour (2021), Michael Singer and Isam Khoury of Cohelan Khoury & Singer in San Diego, 35 years and 45 years of experience respectively, both $825/hour (2018), Zachary Crosner of Crosner Legal PC in Los Angeles, 13 years of experience $750/hour (2022), and James Kawahito of Kawahito Law Group in Los Angeles, with approximately 16 years of experience $750/hour (2020).

43. The requested rates also comport with the adjusted Laffey Matrix, which provides that reasonable hourly rates for attorneys with 10+ years of experience, such as myself, Ms. Serb, and Mr. Crosner, are over $800/hour. The adjusted Laffey Matrix may be found at http://www.laffeymatrix.com/see.html.

44. Fourth, Crosner Legal has been representing Plaintiff Davis (and the State of California) in this matter on a strictly contingent basis and as such, had to forego other financial

opportunities to litigate other cases, incurred the risk of non-recovery after a substantial investment of time, money, and resources, and have done so since the inception of this case without any payment or compensation. This is not an easy burden for a small firm. If, despite these hardships and risks, the best this office could hope for is merely to be paid our customary hourly rate multiplied by the number of hours worked on the case, then we would not be compensated for the hardships and serious risks it faced litigating this contingency case, and would not be incentivized to take on similar private attorney general cases in the future.

45. Fifth, the request for attorney's fees in the amount of one-third of the common fund falls well within the norms accepted by state and federal courts in California in comparable wage and hour actions actually handled by this office. Moreover, the award of a one-third fee recovery under the common fund doctrine was recently approved by the California Supreme Court in Laffitte v. Robert Half Int'l, Inc. (2016) 1 Ca1.5th 480. For all of the above reasons, a common fund fee award here in the amount of one-third of the $575,000 common fund, or $191,666.67, is fair and reasonable.

46. I have reviewed the work performed on the case and the billing inputted, and Crosner Legal's hours worked on this case total 144.9 attorney hours, for a lodestar of approximately $103,615, exclusive of time for attending the hearing on the approval motion and time to be incurred thereafter to implement and administer the settlement. Crosner Legal's aggregated lodestar is summarized in Exhibit 4 hereto. When combined with co-counsel's lodestar, the total lodestar on this matter is $256,916. On a lodestar basis, the requested fees are actually less than the unadorned lodestar, and accordingly there is no request to apply a lodestar modifier.

47. As noted, counsel have represented Plaintiffs over a year with respect to this matter and have expended a significant amount of time and resources in that representation. Crosner Legal agreed to litigate this case on a purely contingent basis and in so doing assumed considerable risk of non-payment for its fees and costs, as discussed above, and as is the case with these matters in general. Under all relevant factors (as outlined herein and in the accompanying memorandum), I respectfully request the Court award Plaintiffs' counsel the requested fees of

$191,666.67 based on the common fund theory with a corresponding lodestar cross-check and no lodestar enhancement.

48. I also request reimbursement of Crosner Legal's actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees.

49. Crosner Legal's costs are $8,834.55, including court filing/service of process fees, mediation fees, Courtcall, deposition costs, and postage, and a true and correct itemization of the costs and expenses incurred is set forth below:

Expense Category	Amount
Court Filing Fees/Service of Process/Attorney Service	$3,389.65
Mediation Fees	$4,500.00
PAGA Filing Fee	$75.00
Postage	$82,17
Deposition Costs	$715.73
CourtCall	$72.00
Total Costs and Expenses	**$8,834.55**

When combined with co-counsel's costs, the total amount requested in reimbursement is $24,776.68. These requested costs are reasonable and uncontested and should be approved

50. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 28, 2025, at Los Angeles, California.

Declarant

EXHIBIT
1

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between plaintiffs Kenneth Davis ("Davis") and Gina Dillard ("Dillard") (collectively, "Plaintiffs") and defendant Homesite Services, Inc. ("Defendant"). The Agreement refers to Plaintiffs and Defendant collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

1.1. "Actions" means *Kenneth Davis v. Homesite Services, Inc*., Case No. CIVSB2421593, initiated on July 1, 2024, and pending in Superior Court of the State of California, County of San Bernardino (*"Davis* case") and *Gina Dillard v. Homesite Services, Inc*., Case No. CIVSB2418616, initiated on June 7, 2024, and pending in Superior Court of the State of California, County of San Bernardino (*"Dillard* case")

1.2. "Administrator" means Simpluris, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4. "Aggrieved Employee" means all persons employed by Defendant in California and classified as a hourly, non-exempt employee who worked for Defendant during the PAGA Period.

1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendant's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee 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 Aggrieved Employees.

1.7. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.8. "Court" means the Superior Court of California, County of San Bernardino.

1.9. "Defense Counsel" means Kevin Cleveland, Esq. and Janelle Di Mino, Esq. of O'Hagan Meyer.

1.10. "Effective Date" means the date when the Court enters a Judgment on its Order

Approving the PAGA Settlement.

1.11. “Gross Settlement Amount” means $575,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the Administrator’s Expenses Payment.

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

1.13. “Judgment” means the judgment entered by the Court based upon the Court’s approval of the settlement.

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

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

1.16. “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, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Representative Payment, and the Administration Expenses Payment. The remainder is the “Net Settlement Amount” to be paid to Aggrieved Employees as Individual PAGA Payments.

1.17. “Notice of PAGA Settlement” means the letter, substantially similar to the form attached hereto as **Exhibit A**, explaining the Settlement to the Aggrieved Employees, which will accompany each settlement check.

1.18. “PAGA Counsel” means Zachary M. Crosner, Esq., Jamie K. Serb, Esq., Sepideh Ardestani, Esq. of Crosner Legal, P.C., and Haig B. Kazandjian, Esq., Cathy Gonzalez, Esq. and Christina N. Mirzaie, Esq. of Haig B. Kazandjian Lawyers APC, the attorneys representing the Plaintiffs in the Actions.

1.19. “PAGA Counsel Fees Payment” means the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees incurred to prosecute the Actions.

1.20. “PAGA Counsel Litigation Expenses Payment” means the amount allocated to PAGA Counsel for reimbursement of reasonable expenses incurred to prosecute the Actions.

1.21. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.22. "PAGA Period" means the period from March 27, 2023 to April 15, 2025.

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

1.24. "PAGA Notice" means Dillard's March 27, 2024 letter and Davis' April 19, 2024 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.25. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($83,583.33) and the 75% to LWDA ($250,749.99) in settlement of PAGA claims.

1.26. "PAGA Representative" means each of the named Plaintiffs in the Operative Complaint in the Actions.

1.27. "PAGA Representative Payment" means the payment to each of the PAGA Representatives for initiating the Actions and providing services in support of the Action

1.28. "Plaintiffs" means Kenneth Davis and Gina Dillard, the named plaintiffs in the Actions.

1.29. "Released PAGA Claims" means the claims being released by the Plaintiffs and PAGA Counsel and as described in Paragraph 5 below.

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

1.31. "Settlement" means the disposition of the Actions effected by this Agreement and the Judgment.

1.32. "Defendant" means named Defendant Homesite Services, Inc.

1.33. "Operative Complaint" means the Amended Complaint that Plaintiff Dillard shall, as part of this Settlement, file in the *Dillard* case. Plaintiff Dillard agrees to amend her Complaint to add Plaintiff Davis as plaintiff to her lawsuit. In amending the Complaint, Plaintiff Dillard will also add the claims and theories encompassed by the settlement and release. Defendant will stipulate to the filing of an Amended Complaint. Within 15 calendar days of approval of this Settlement, Plaintiff Davis will dismiss the *Davis* case.

2. **RECITALS**.

2.1. On June 7, 2024, Dillard commenced this Action by filing a complaint alleging causes of action against Defendant for alleged violations of the California Labor Code committed against Plaintiff and the Aggrieved Employees for failure to provide employment records, failure to pay overtime and double time, failure to pay minimum wage, failure to provide rest and meal periods, failure to keep accurate payroll records and provide itemized wage statements, failure to provide basic information at the time of hiring and when employment changes occur, failure to pay reporting time, failure to pay split shift wages, failure to timely pay all wages earned, failure to pay all wages earned upon discharge or resignation, failure to reimburse necessary, business-related expenses, failure to provide notice of paid sick time and accrual, and engagement in other conduct that resulted in violations of the California Labor Code, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 432, 510, 512(a), 558(a),1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2810.5(a)(1)(A)-(C), California Code of Regulations, Title 8, sections 11010, et seq., as well as violations of the applicable IWC Wage Order. On July 1, 2024, Davis filed a complaint also alleging a cause of action pursuant to PAGA for, unpaid minimum wages, unpaid overtime wages, unpaid premium wages for unlawful meal and rest periods, unlawful deductions, failure to provide employment records (including time, pay, and personnel records), failure to provide employees with a written description of each quota they are subject to, failure to pay reporting pay, failure to provide suitable seating to employees when the nature of the work reasonably permits the use of seats, failure to provide suitable resting facilities, failure to timely pay all wages earned, failure to provide notice of paid sick time and accrual, failure to pay vested vacation time and/or paid time off, failure to reimburse business expenses, failure to issue accurately itemized wage statements, failure to maintain accurate payroll records, failure to timely pay wages upon separation or discharge of employment, unlawful agreements, unlawful criminal history inquiries, unlawfully purporting to pay legal wages, unlawfully refusing to pay wages due and payable, and engagement in other conduct that resulted in violations of the California Labor Code, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 208, 216, 221, 223, 226, 226.6, 226.7, 227.3, 245, 246, 247, 248-248.5, 432, 432.5, 432.6(a), 510, 512(a), 558(a),1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2100-2112, 2699, 2800, 2802, 2810.5(a)(1)(A)-(C), California Code of Regulations, Title 8, sections 11010, et seq., as well as violations of the applicable IWC Wage Order

2.2. In connection with this Agreement, Plaintiff Dillard agrees to file an Amended Complaint in the *Dillard* case. Plaintiff Dillard agrees to amend her Complaint to add Plaintiff Davis as plaintiff to her lawsuit. In amending the Complaint, Plaintiff Dillard will also add the claims and theories encompassed by the settlement and release. Defendant will stipulate to the filing of an Amended Complaint. Within 15 calendar days of approval of this Settlement, Plaintiff Davis will dismiss the *Davis* case.

2.3. The Stipulation to file the Amended Complaint shall be filed on or before the date of the filing of the motion for preliminary approval. Class Counsel will send the draft Amended Complaint and Stipulation for the Amended Complaint for comments or revisions. Class Counsel shall seriously consider in good faith Defense Counsel's comments before filing.

2.4. The Parties will treat the Amended Complaint as the Operative Complaint. Defendant denies all material allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.5. Pursuant to Labor Code section 2699.3, subd.(a), and for the purposes of settlement, Defendant stipulates that Plaintiffs gave timely written notice to Defendant and the LWDA by sending the PAGA Notices.

2.6. On April 15, 2025, the Parties participated in an all-day mediation presided over by Chris Barnes, Esq., which led to this Agreement to settle the Action.

2.7. Prior to mediation, Plaintiffs obtained, through informal discovery a 20% sampling of time and corresponding pay records, each Plaintiffs' personnel files, and Defendant's employee handbooks in effect during the PAGA Period.

2.8. The Parties, PAGA 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. <u>Gross Settlement Amount</u>. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $575,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount 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 Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. <u>Payments from the Gross Settlement Amount</u>. 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 Plaintiffs: A PAGA Representative Payment to each Plaintiff of not more than $10,000.00 (total $20,000.00) (in addition to any Individual PAGA Payment the Plaintiffs is entitled to as an Aggrieved Employee). Defendant will not oppose Plaintiffs' request for a PAGA Representative Payment that does not exceed this amount. As part of the Settlement approval motion, Plaintiffs and/or PAGA Counsel will request approval for PAGA Representative Payment. If the Court approves a PAGA Representative Payment less than the amount requested, the Administrator will retain the remainder in the PAGA Penalties. The Administrator will pay the PAGA Representative Payment to each Plaintiff using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the PAGA Representative Payment to each Plaintiff and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any employee taxes owed on the PAGA Representative Payment to each Plaintiff.

3.2.2. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 1/3% which is currently estimated to be $191,666.67 and PAGA Counsel Litigation Expenses Payment of not more than $25,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. As part of the Settlement approval motion, Plaintiffs and/or PAGA Counsel will request approval for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the PAGA Penalties. Released Parties shall have no liability to PAGA Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed $4,000.00 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 $4,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $334,333.33 to be paid from the Gross Settlement Amount, with 75% ($250,749.99) allocated to the LWDA PAGA Payment and 25% ($83,583.33) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($83,583.33) 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 individual PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment and hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any taxes owed on their Individual PAGA Payments.

3.2.4.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the lesser amount as PAGA Penalties and report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 386 Aggrieved Employees who worked a total 13,300 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within 21 days of the Effective Date, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 21 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Representative Payment, the PAGA Counsel Litigation Expenses Payment, and the PAGA Counsel Fees Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment and the PAGA Counsel Fees Payment shall not precede disbursement of Individual PAGA Payments.

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

4.4.2. The distribution of Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement.

4.4.3. The Administrator must conduct an Aggrieved Employee Address Search for all

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

4.4.4. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

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

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount Plaintiffs and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice and any other claims that arise out of Plaintiffs' employment with Defendant ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish 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.

Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the Actions, and/or the PAGA Notices.

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiffs, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiffs and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel is responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. Defense Counsel agrees that they will expeditiously review and provide feedback on the motion for approval and will not oppose any motion which is consistent with the terms of this Agreement. PAGA Counsel is responsible for delivering the Court's Order Granting Approval of PAGA Settlement to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

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

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

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

7.4 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.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE.
Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, there are 386 Aggrieved Employees who worked 13,300 Pay Periods during the PAGA Period. The Gross Settlement Amount was agreed upon based on Defendant's representations of the total number of Pay Periods in the PAGA Period. If the number of Pay Periods during the PAGA Period exceeds 13,300 by more than ten percent (10%), the Gross Settlement Amount shall be increased on a pro rata basis per Pay Period exceeding the 10% increase (i.e. if the number increases by 11%, the Gross Settlement Amount shall be increased by 1%).

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Actions, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the 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 another party appeals the 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.

9.2 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the 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 Aggrieved Employees), 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 approval of the Settlement and entry of 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 PAGA Representative Payment or any payments to PAGA Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. ADDITIONAL PROVISIONS.

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

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

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

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

10.5 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.

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

10.7 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.

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

10.9 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.

10.10 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.

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

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 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.

10.14 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.

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

To Plaintiffs:

Zachary Crosner
zach@crosnerlegal.com
Jamie Serb
jamie@crosnerlegal.com
Sepideh Ardestani
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To Defendant:

Kevin Clevland
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Janelle Di Mino
jdimino@ohagenmeyer.com
O'HAGAN MEYER
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Fresno, CA 93711

10.16 <u>Execution in Counterparts</u>. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign with Certificate of Completion to be providing to the Parties), 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.

10.17 <u>Stay of Litigation</u>. 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 that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 06 / 05 / 2025 ______________________________

Plaintiff Gina Dillard

Dated: ____________ ______________________________

Plaintiff Kenneth Davis

Dated: ____________ ______________________________

Michelle Amerine for:
Defendant Homesite Services, Inc.

Dated: ____________ **CROSNER LEGAL, PC**

____

Zachary Crosner, Esq.
Jamie Serb, Esq.
Sepideh Ardestani, Esq.
Attorneys for Plaintiff Kenneth Davis

Dated: June 5, 2025 **HAIG B. KAZANDJIAN LAWYERS APC**

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Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Christina N. Mirzaie, Esq.
Attorneys for Plaintiff Gina Dillard

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Dated: ______________

____
Plaintiff Gina Dillard

Dated: 06 / 04 / 2025

____
Plaintiff Kenneth Davis

Dated: 06/10/2025

Michelle Amerine
Michelle Amerine (Jun 10, 2025 14:32 PDT)
Michelle Amerine for:
Defendant Homesite Services, Inc.

Dated: 06/04/2025

CROSNER LEGAL, PC

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Zachary Crosner, Esq.
Jamie Serb, Esq.
Sepideh Ardestani, Esq.
Attorneys for Plaintiff Kenneth Davis

Dated: ______________

HAIG B. KAZANDJIAN LAWYERS APC

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Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Christina N. Mirzaie, Esq.
Attorneys for Plaintiff Gina Dillard

Dated: June 11, 2025

O'HAGAN MEYER

Kevin Clevland, Esq.
Janelle Di Mino, Esq.
Attorneys for Defendant Homesite Services, Inc.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

You are receiving this Notice because you are entitled to money as a result of a court approved settlement in *Gina Dillard, Kenneth Davis v. Homesite Services, Inc*., San Bernardino County Superior Court, Case No. CIVSB2418616 (the "**Lawsuit**").

What is this case about?

In the Lawsuit, Plaintiffs Gina Dillard and Kenneth Davis asserted representative claims against Defendant Homesite Services, Inc. on behalf of all persons employed by Defendant in California in a non-exempt position during the period of March 27, 2023 and April 15, 2025 (the "**Settlement Period**"). Plaintiffs alleges claims for penalties and unpaid wages pursuant to the Private Attorneys General Act of 2004 ("**PAGA**") Labor Code section 2698 *et seq.* based on the alleged (1) failure to pay minimum wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to pay wages due at separation or discharge; (6) knowing and intentional failure to comply with itemized wage statements; (7) failure to issue accurately itemized wage statements; (8) failure to pay reporting time wages; (9) failure to pay split shift wages; (10) failure to pay vested paid time off and/or vacation time; (11) failure to provide notice of paid sick time and accrual; (12) failure to provide employment records (including time, pay, and personnel records); (13) failure to reimburse business expenses; (14) failure to provide suitable seating to employees when the nature of the work reasonably permits the use of seats; (15) failure to provide suitable resting facilities; (16) unlawful agreements; (17) unlawful criminal history inquiries; and (18) unlawfully purporting to pay legal wages,. Defendant contends that it compensates employees in full compliance with the law. It denies each of the claims and contentions alleged by Plaintiffs in the Lawsuit.

What are the terms of the Settlement?

Plaintiffs and Defendant reached a settlement which was reviewed and approved by the Court. Defendant's records show that you were employed by Defendant in a covered position during the Settlement Period. Accordingly, you are entitled to an Individual Settlement Payment based on your percentage share of pay periods during the Period.

What should I do now?

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

EXHIBIT
2

CROSNER LEGAL
PUBLIC INTEREST RIGHTS

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

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

April 19, 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

VIA U.S. CERTIFIED MAIL:

Tina M. Tomei,
Agent for Service of Process for:
Homesite Services, Inc., A California Corporation
2001 Crow Canyon Rd Ste 220
San Ramon, CA 94583

Homesite Services, Inc., A California Corporation
Attn: Human Resources / Legal Department
2001 Crow Canyon Rd Ste 220
San Ramon, CA 94583

Homesite Services, Inc., A California Corporation
6611 E. Preston Ave. Ste. E
Livermore, CA 94551

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To:	California Labor and Workforce Development Agency and Homesite Services, Inc., A California Corporation
Date:	April 19, 2024
Subject:	*Kenneth Davis v. Homesite Services, Inc., A California Corporation*

Introduction

This office represents PLAINTIFF, Kenneth Davis (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 entity and individual managing agents of said entity: Homesite Services, Inc., A California Corporation (hereinafter, this entity and its 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 and/or the address of the Secretary of State of the State of incorporation and/or the entity address as provided on wage statements issued by DEFENDANTS to NON-EXEMPT AGGRIEVED EMPLOYEES.

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, 204, 208, 216, 221-223, 226, 226.7, 227.3, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2100-2112, 2802, 2810.5, and all applicable Wage Orders.

<u>The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES</u>

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, DEFENDANTS, and each of them, maintain the same agent for service of process and principal business office as provided to the Secretary of State of California and/or the state of incorporation and/or based on information and belief, maintain some of the same attorneys and/or 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, DEFENDANTS 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 warehouse distribution centers, warehouses, facilities and/or other location(s) in California, including but not limited to, the warehouse distribution centers, warehouses, facilities and/or other locations in San Bernardino, California. DEFENDANTS, through its various locations, serve the manufacturing, warehousing and/or logistics industry.[1] Although DEFENDANTS may operate a successful company 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(s) of warehouse worker and/or warehouse associate and/or a similar title(s) and/or job position(s) from in or around 2018 through in or around November 2023. PLAINTIFF worked for DEFENDANTS at DEFENDANTS' San Bernardino, California location(s). PLAINTIFF regularly worked at least approximately eight (8) to twelve

[1] *See* https://homesiteservices.net/. Last visited on April 18, 2024.

(12) hours per day, at least five (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also compensated with non-discretionary compensation, including but not limited to, shift differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation.

Among other things, DEFENDANTS (1) failed and continue to fail to keep accurate and complete time records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continue to fail to pay PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) 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; (4) failed and continue to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) 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; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continue to fail to place PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) 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; (11) 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; (12) required and continue to require PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into PLAINTIFF's, NON-EXEMPT AGGRIEVED EMPLOYEES', and/or EXEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment; (13) failed and continue to fail to provide suitable seating; and (14) required and continue to require PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES. All applicable

IWC Wage Orders, section 7 similarly requires employers to keep accurate time records reflecting the times during which allowed meal periods were provided each day.

Based on information and belief, DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of DEFENDANTS' time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

DEFENDANTS failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of DEFENDANTS' failure to relieve PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, DEFENDANTS further failed, and continue to fail, to record the true start and end times of PLAINTIFF's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Based on further information and belief, DEFENDANTS further failed and continue to fail, to record the true start and end times of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

Additionally, DEFENDANTS failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES.

DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.[2]

<u>Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432</u>:
<u>Time and Pay Records</u>
Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work

[2] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar ($750) penalty from the employer. Lab. Code section 226(f).

Personnel Records
In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar ($750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, DEFENDANTS failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, DEFENDANTS failed and continue to fail to timely produce complete payroll and personnel records when requested by NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES.

These violations subject DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.

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.4th 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 10th 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.4th 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, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were forced to take late meal periods in order to complete assigned job duties.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently interrupted during purported meal periods and/or had meal periods cut short and/or restricted to DEFENDANTS' premises due to the need to continue assigned job duties.

For example, PLAINTIFF was frequently required to take shortened and/or interrupted meal periods and/or work through his meal periods completely due to the need to complete assigned job duties, including without limitation, unloading delivery trucks and/or completing other work tasks.

For example, PLAINTIFF was required to unload DEFENDANTS' delivery trucks anytime they arrived at PLAINTIFF's assigned work location with deliveries, including but not limited to, while clocked out for purportedly off-duty meal periods, resulting in denied meal periods and DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Also, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to DEFENDANTS' premises and/or required to monitor work communication devices during unpaid meal periods, and as such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and DEFENDANTS' control during purportedly off-duty meal periods, resulting in denied meal periods as well as DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

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.

For example, as explained herein, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to DEFENDANTS' premises and/or required to monitor work communication devices during unpaid meal periods, and as such, NON-EXEMPT AGGRIEVED EMPLOYEES were not relieved of all duties and DEFENDANTS' control during purportedly off-duty meal periods, resulting in denied meal periods as well as DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages to NON-EXEMPT AGGRIEVED EMPLOYEES.

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.

For example, when PLAINTIFF worked more than ten (10) and/or twelve (12) hours in a shift, PLAINTIFF was usually not provided with a compliant second meal period.

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.[3] 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[th] 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.5th 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, *Bufil v. Dollar Fin. Grp.*, 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

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[3] 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").

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, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were frequently if not always unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to DEFENDANTS' premises.

For example, per DEFENDANTS' unlawful rest period policy and practice, PLAINTIFF was only afforded a maximum of a single rest period per shift on most shifts PLAINTIFF worked even when working more than six (6) hours in a shift. It was only when PLAINTIFF worked in excess of ten (10) hours that he would be afforded a maximum of two (2) rest periods and any rest periods were typically interrupted, cut short, on-duty and/or otherwise legally noncompliant. For example, PLAINTIFF was frequently interrupted during any rest periods due to the need to unload delivery trucks and/or complete other assigned work tasks.

Based on information and belief, DEFENDANTS did not have a lawful policy, instruction, or practice as to the taking, timing, or duty-free nature of rest periods. For example, 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, DEFENDANTS limited PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving their work stations , in violation of California rest period law.

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.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were restricted to the worksite premises and/or were required to monitor work communication devices and/or respond to work communications during purportedly off-duty rest periods, and as such, were not relieved of all duties and DEFENDANTS' control during any rest periods, in violation of California rest period law.

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.[4]

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

DEFENDANTS' locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. DEFENDANTS could have provided NON-EXEMPT AGGRIEVED EMPLOYEES with a resting facility within DEFENDANTS' facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, NON-EXEMPT AGGRIEVED EMPLOYEEES were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of DEFENDANTS' premises which are not designated or reserved for rest, such as their personal vehicles.

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[4] 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").

DEFENDANTS did not provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

DEFENDANTS' failure to provide suitable resting facilities to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

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 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 herein, PLAINTIFF was frequently required to clock out for meal periods but to continue completing work tasks off the clock due to including but not limited to, the need to unload any incoming delivery trucks and/or complete other works tasks, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were also pressured to complete at least some additional work tasks off-the-clock in order to meet DEFENDANTS' goals and expectations.

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 phones and/or mobile devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

For example, based on information and belief, PLAINTIFF was 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 he received to his phone and/or mobile device and was required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to be at their assigned workstations at the start of a scheduled shift, thereby forcing NON-EXEMPT AGGRIEVED EMPLOYEES to gather work-related equipment and/or safety gear, make any necessary adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES were required to stand in line behind other employees to access DEFENDANTS' time-keeping system and/or to enter DEFENDANTS' facilities and/or were required to spend time reinitiating DEFENDANTS' time-keeping system before they could clock in for the start of their shifts and/or after completing a purported meal period.

Based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES. For example, based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for the end of their shifts but to continue working due to the need to return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-related communications and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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, goggles/safety glasses, reflective vests, hats/bump caps/safety helmets and/or face masks) during meal periods, before the start of a scheduled shift, and after completing a scheduled shift, resulting in DEFENDANTS' failure to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all work time and the underpayment of minimum wages and overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on information and belief, at times, DEFENDANTS' electronic employee time-keeping system/app malfunctioned such that NON-EXEMPT AGGRIEVED EMPLOYEES were required to either reinitiate and/or otherwise troubleshoot the system 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, NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo security screenings and/or other mandated screenings before and/or after a scheduled shift and/or before or after clocking in/out for work, resulting in pre-shift and/or post-shift off-the-clock work.

Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Based on information and belief, DEFENDANTS failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES the applicable minimum wage for the county and/or city within which the NON-EXEMPT AGGRIEVED EMPLOYEE worked in California.

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.

For example, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that demonstrate DEFENDANTS rounded NON-EXEMPT AGGRIEVED EMPLOYEES' total hours worked to at least the nearest tenth, quarter, half and/or whole hour during many if not all pay periods, resulting in DEFENDANTS' failure to compensate NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and the underpayment of wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

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.[5]

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

[5] 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").

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 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 calculated the owed overtime rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s) based on the minimum wage established for the cities and/or counties within which NON-EXEMPT AGGRIEVED EMPLOYEES worked, resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES who worked in cities and/or counties in California with minimum wage rates above the California minimum wage rate.

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.

For example, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES earned shift differential pay, non-discretionary bonuses/incentive pay and/or other non-discretionary compensation during pay periods in which they worked overtime, yet DEFENDANTS failed to incorporate all non-discretionary compensation into the regular rate(s) used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to 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.[6]

Violation of California Labor Code §§ 245-248.5: 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.

Based on information and belief, DEFENDANTS further failed to provide notice of the correct sick leave amount balance available to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statements.

Based on information and belief, DEFENDANTS failed to put NON-EXEMPT AGGRIEVED on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the NON-EXEMPT AGGRIEVED EMPLOYEE throughout the relevant time period.

Based on information and belief, throughout the relevant period, DEFENDANTS failed to provide notice of sick leave amount balance left for PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, thus affecting their intelligent exercise of their paid sick leave. But for this failure, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and PLAINTIFF seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES.

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[6] 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").

In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

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 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.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

DEFENDANTS violated and continue to violate Labor Code section 216 by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute's provisions were violated.[7]

[7] Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee") (emphasis added).

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.

Separately, and independent of the above allegations, based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES that failed to list the total hours worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

Based on information and belief, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES that fail to accurately list all deductions, in violation of Labor Code section 226(a)(4).

For example, 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 is being paid in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section 226(a)(6). For example, based on information and belief, at times, DEFENDANTS issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES containing payment for hours worked during previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with.

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).

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) due to DEFENDANTS' failure to list an overtime rate category at all and/or failure to list a category containing the proper overtime rate.

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.[8]

Unlawful Deductions: Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief DEFENDANTS made unlawful deductions from NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYES paychecks during the relevant period including without limitation, deducting business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully ducting wages for negligently damaged property and/or unlawfully deducting transaction fees/pay/money card fees and/or deducting costs advanced by DEFENDANTS. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee").

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. DEFENDANTS violated this section by, including but not limited to, failing to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject DEFENDANTS to civil penalties under Labor Code section 210. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute's provisions were violated.

Reporting Time Pay Violations: Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than

[8] See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to pay all reporting time wages to NON-EXEMPT AGGRIEVED EMPLOYEES violated and continue to violate the applicable Wage Order, section 5(A)-(B) and the California Labor Code, including but not limited to section 1198.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

All applicable IWC Wage Orders, Section 14(A-B) provides:

> (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
>
> (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, DEFENDANTS failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, based on information and belief, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

DEFENDANTS' NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide suitable seating in reasonable proximity to NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.[9]

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, DEFENDANTS' violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, and other violations described herein result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. DEFENDANTS acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, DEFENDANTS paid PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. As such, PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Pay Vested Vacation/Paid Time Off: California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and

[9] See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

belief, DEFENDANTS had and continue to have a uniform policy and practice of failing to allow NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

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 (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

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.[10]

Violation of Labor Code Section 208: Labor Code Section 208 provides: Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law.

Based on information and belief, DEFENDANTS have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES who are terminated with their final paychecks at the place of discharge and/or of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES with their final paychecks at the office or agency of DEFENDANTS in the county where the work was performed, in violation of Labor Code Section 208.

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

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[10] (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").

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, uniforms/work clothing/work shoes/personal protective/safety gear and the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' personal cell phones/mobile devices, 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 and respond to work-related calls and/or messages from supervisors and/or other employees regarding scheduling and/or other work tasks but were not reimbursed by DEFENDANTS at all and/or in full for these business expenses.

For example, DEFENDANTS required PLAINTIFF to use his personal cell phone / mobile device for work, including but not limited to, for scheduling purposes and/or to answer work-related questions and/or for other work purposes, however, DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for the business expenses, including without limitation, increased data plan charges and/or other business expenses PLAINTIFF incurred in connection with being required to use his personal cell phone / mobile device for work.

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 their own hand tools and/or equipment required to perform their assigned job duties and/or for the costs of purchasing and/or maintaining work uniforms/clothing/shoes and/or protective gear (e.g., gloves and/or face masks).

Based on information and belief, at times, NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the business use of their personal vehicles, including mileage, wear and tear and/or cost of fuel when they were required to drive around and/or between job sites, and/or otherwise use their personal vehicles in carrying out the duties assigned by DEFENDANTS. 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.

As explained above, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not reimbursed for the cost of

using their personal phone for work-related purposes and/or 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 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.

<u>Violation of Labor Code Sections 2100-2112</u>:
Pursuant to Labor Code Sections 2100–2112, employers with one hundred (100) or more employees at a single warehouse distribution center, or one thousand (1,000) or more employees at one or more warehouse distribution centers in California are required to provide nonexempt employees, upon hire, with a written description of each quota they are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a defined period of time and any potential adverse employment action that may result from failure to meet the quota. Labor Code Section 2102 (see below) prohibits adverse employment actions against employees who fail to meet their quota if the quota was not properly disclosed to the employee and prohibits quotas that prevent an employee from taking his or her meal or rest breaks, use of restrooms, or that interfere with compliance with California's occupational health and safety laws.

Labor Code Section 2101 provides:
Each employer shall provide to each employee, upon hire, or within 30 days of the effective date of this part, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota.

Labor Code Section 2102 provides:
An employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the Labor Code or division standards. An

employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods, or occupational health and safety laws in the Labor Code or division standards, or for failure to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

Labor Code Section 2104 provides in pertinent part:
(a)(1) If a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety laws in the Labor Code or division standards, they have the right to request, and the employer shall provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data.

(2) If a former employee requests a written description of the quotas to which they were subject and a copy of their own personal work speed data pursuant to paragraph (1), the employer shall provide 90 days of the former employee's quotas and personal work speed data for the 90 days prior to the date of the employee's separation from the employer.
(b) An employer that receives a written or oral request for information pursuant to subdivision (a) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

Based on information and belief, during the relevant period, DEFENDANTS employed 100 or more NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at a single warehouse distribution center and/or employed 1,000 or more NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES at one or more distribution centers in California rendering DEFENDANTS subject to the provisions of Labor Code Sections 2100-2112, during the relevant period.

Based on information and belief, DEFENDANTS had/have a policy and practice of failing to provide NON-EXEMPT AGGRIEVED EMPLOYEES, upon hire, with a written description of each quota they are subject to (e.g., quantified number of tasks to be performed or materials to be handled) within a defined period of time and any potential adverse employment action that may result from failure to meet the quota. Based on further information and belief, DEFENDANTS had/have a policy and practice of subjecting NON-EXEMPT AGGRIEVED EMPLOYEES to quotas that prevented those NON-EXEMPT AGGRIEVED EMPLOYEES from taking their meal and rest periods and/or using bathroom facilities and/or interfered with compliance of California's occupational health and safety laws.

Based on further information and belief, DEFENDANTS have/had a policy and practice of subjecting NON-EXEMPT AGGRIEVED EMPLOYEES to adverse employment actions for failure to meet a quota that was not disclosed pursuant to Labor Code Section 2101 and/or did not allow them to comply with meal and rest period laws and/or occupational health and safety laws, in violation of Labor Code section 2102.

Based on information and belief, DEFENDANTS failed and continue to fail to timely produce upon written and/or oral request by current and/or former NON-EXEMPT AGGRIEVED EMPLOYEES of the belief that meeting a quota caused a violation of their right to a meal or rest period and/or required them to violate any occupational health and safety laws, a written description of each quota to which the employee is subject and/or a copy of the most recent 90 days of the NON-EXEMPT AGGRIEVED EMPLOYEE's own personal work speed data.

As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor Code section 2100-2112 as to NON-EXEMPT AGGRIEVED EMPLOYEES and are subject to civil penalties.

Unlawful Agreements and/or Unlawful Waivers:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer…shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer…to be prohibited by law." Based on information and belief, DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

Labor Code section 432.6(a), provides that "a person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right…"Based on information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. By requiring NON-EXEMPT AGGRIEVED EMPLOYEES to sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful provisions as a condition of employment, DEFENDANTS violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, DEFENDANTS asked NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, DEFENDANTS, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver
Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA '"…is a representative action on behalf of the state'" *Kim v Reins Int'l California, Inc.,* (2020) 9 Cal. 5^{th} 73, 86-87. It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. *See Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4^{th} 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. *Kim v Reins Int'l California, Inc.,* (2020) 9 Cal. 5^{th} 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action … is a representative action on behalf of the state.'")

Upon information and belief, DEFENDANTS required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

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: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

Kiara Bramasco

Kiara Bramasco, Esq.
CROSNER LEGAL, PC

CROSNER LEGAL
PUBLIC INTEREST RIGHTS

Manny Martinez <manny@crosnerlegal.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov> Fri, Apr 19, 2024 at 2:51 PM
To: "prelit@crosnerlegal.com" <prelit@crosnerlegal.com>

4/19/2024

LWDA Case No. LWDA-CM-1023419-24
Law Firm : Crosner Legal, PC
Plaintiff Name : Kenneth Davis
Employer: Homesite Services, Inc.
Filing Fee : $75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 3

EXHIBIT

4

Dillard/Davis v. Homesite Services, Inc.
(San Bernardino County Superior Court Case No. CIVSB2418616)

Crosner Legal Time Report

Tasks	Zachary Crosner	Jamie Serb	Sepideh Ardestani	Kiara Bramasco	Branden Hamilton
Pre-filing Case Investigation	2.3	0.0	0.0	5.1	5.2
Pleadings and Law and Motion	4.1	0.0	0.0	0.0	9.9
Discovery and Post-Filing Investigation	1.7	0.0	5.6	0.0	0.2
Court Appearances	0.0	0.0	3.6	0.0	0.0
Case Management; Litigation Strategy & Analysis	6.5	34.4	45.8	0.0	0.0
Mediation and Settlement	4.2	7.4	8.9	0.0	0.0
Total Hours	18.8	41.8	63.9	5.1	15.3
Hourly Rate	$800	$750	$700	$650	$600
Lodestar	**$15,040.00**	**$31,350.00**	**$44,730.00**	**$3,315.00**	**$9,180.00**

Total Hours: 144.9
Total Lodestar: $103,615