

D.LAW, INC.

Roman Shkodnik (SBN 285152)

Emma Geesaman (SBN 352715)

Enoch Kim (SBN 261146)

Arianna Razi (SBN 356930)

250 N Madison Avenue, 2nd Floor

Pasadena, CA 91101-1639

Telephone: (818) 962-6465

Facsimile: (818) 962-6469

Emails: R.Shkodnik@d.law, e.geesaman@d.law, e.kim@d.law, a.razi@d.law

Attorneys for Plaintiff FRED NAZAR, on behalf
of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FRED NAZAR, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

SCHINDLER ELEVATOR
CORPORATION, a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2024-00022945-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Michael D. Washington

Dept.: C-73

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

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points and
Authorities; Declarations of Michael Sutherland
and Fred Nazar; and [Proposed] Order]*

Date: April 17, 2026

Time: 9:00 a.m.

Dept.: C-73

Original Complaint Filed: May 17, 2024

FAC Filed: January 7, 2026

Trial Date: None Set

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1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiff Fred Nazar (“Plaintiff”), on behalf of himself and all other similarly situated employees of Defendant Schindler Elevator Corporation (“Defendant”) (Plaintiff and Defendant collectively referred to herein as “the Parties”).
2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement (“Motion”). A true and correct copy of the Parties’ Class Action and PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”) is attached as **Exhibit 1** hereto, with the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the Settlement Agreement.

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3. On May 17, 2024, Plaintiff Nazar commenced a class action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5; (7) Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5; (8) Violation of Labor Code § 203; and (9) Violation of Business & Professions Code § 17200 *et seq.* (the “Action” or “Class Action”).

4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and California’s Labor and Workforce Development Agency (“LWDA”) by sending his PAGA Notice on May 17, 2024 (LWDA-CM-1029116-24). A true and correct copy of his PAGA Notice is attached hereto as **Exhibit 2**.

5. On June 21, 2024, Defendant filed its Notice of Removal removing the Class Action to the United States District Court for the Southern District of California, case number 3:24-cv-01082-

1 BJC-AHG.

2 6. On July 23, 2024, Plaintiff filed a PAGA representative action against Defendant
3 seeking civil penalties pursuant to PAGA for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
4 Wages and Overtime under Labor Code §§ 510 and 1198; (3) Meal Period Liability Under Labor
5 Code §§ 226.7, 512(a); (4) Rest-Break Liability Under Labor Code §§ 226.7; (5) Violation of Labor
6 Code §§ 226(a) and 1174; (6) Violation of Labor Code § 204; (7) Violation of Labor Code §§ 201,
7 203; and (8) Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5 (the “PAGA
8 Action”). On August 23, 2024, Defendant filed its Notice of Removal removing the PAGA Action to
9 the United States District Court for the Southern District of California, case number 3:24-cv-01498-
10 BJC-AHG.

11 7. On October 24, 2025, the Parties filed a joint stipulation to remand the Class Action
12 to the San Diego County Superior Court, which was granted on November 14, 2025.

13 8. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice
14 to Defendant and the LWDA by sending his amended PAGA Notice on December 11, 2025 (LWDA-
15 CM-1029116-24). A true and correct copy of his amended PAGA Notice is attached hereto as **Exhibit**
16 **3**. On January 7, 2026, Plaintiff subsequently filed his First Amended Class Action Complaint, which
17 adds causes of action for failure to provide paid sick pay, failure to reimburse necessary business
18 expenditures, and Penalties Pursuant to Labor Code § 2699, *et seq.* (“Operative Complaint”).

19 9. On January 12, 2026, the Parties filed a Stipulated Request for Dismissal of Action in
20 the PAGA Action, which the United States District Court for the Southern District of California
21 granted on the same day.

22 10. Plaintiff contends that Defendant failed to pay all wages due by requiring Class
23 Members to work off the clock and improperly rounding, failed to properly pay overtime, meal and
24 rest premiums, and sick pay at the correct rate of pay, failed to provide meal and rest breaks and
25 premium wages for non-compliant meal and rest breaks, failed to furnish accurate wage statements,
26 failed to maintain required payroll records, failed to timely pay wages including final wages, failed
27 to pay timely wages, failed to provide paid sick pay, and failed to reimburse necessary business
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1 expenses, among other things. Defendant denies any liability and maintains that its policies and
2 practices fully comply with the California Labor Code.

3 **Investigation**

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

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

22 **Settlement Efforts**

23 13. On March 24, 2025, the Parties participated in an all-day mediation with mediator
24 Tripper Ortman, Esq., a respected and highly experienced mediator in wage and hour class actions.
25 During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the
26 risks of litigation and the risks to both Parties of proceeding with a class certification motion, as well
27 as the law on unpaid wages, meal periods, rest periods, wage statements, reimbursements, sick pay,
28 and final pay. Despite productive negotiations, the Parties were unable to reach a resolution that day.

1 With the continued assistance of mediator Ortman, the Parties continued negotiations and, on April
2 25, 2025, accepted a mediator's proposal. Thereafter, the Parties worked together to finalize the
3 Memorandum of Understanding and, ultimately, the long form settlement terms set forth in the
4 Settlement Agreement.

5 14. Based on their own independent investigations and evaluations, Class Counsel is of
6 the opinion that the Settlement with Defendant for the consideration and terms set forth herein,
7 considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate.
8 Class Counsel is also of the opinion that the total consideration and payment set forth in this
9 Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further
10 litigation, the possibility of losing class certification, that the PAGA claim could be deemed
11 unmanageable, and the defenses that Defendant has asserted and/or could assert as to the substantive
12 merit of the claims. Based on the settlement negotiations, which were extensive and conducted in
13 good faith and at arm's length between attorneys with substantial experience litigating wage and hour
14 class action cases, the Settlement was the product of a non-collusive settlement process and
15 compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has
16 determined that the Settlement is in the best interests of the Class.

17 **Summary of the Settlement**

18 15. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay
19 \$1,450,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and
20 release all claims asserted by Plaintiff in the Operative Complaint on behalf of the proposed Class.
21 (Exhibit 1, Settlement Agreement, ¶ 1.21.) The Gross Settlement Amount will be used to pay
22 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel
23 Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment,
24 and the Administration Expenses Payment. (*Id.* at ¶¶ 3.2–3.2.5.) The Gross Settlement Amount does
25 not include the employer's share of payroll taxes, which will be paid by Defendant in addition to the
26 Gross Settlement Amount. (*Id.* at ¶ 3.1.) Based on its records, Defendant estimates that 715 Class
27 Members worked a total of approximately 102,349 workweeks from May 17, 2020 through March
28 24, 2025. (*Id.* at ¶ 8.) If the total number of workweeks increases by more than 10% (*i.e.* an increase

of 10,235 or more workweeks) during the Class Period, then, at Defendant’s option, either (a) the Gross Settlement Amount will be increased in proportion to the number of total workweeks in the Class Period in excess of 10% (e.g., if the final number of workweeks for the Class Period increases by 15% over 102,349 workweeks, the Gross Settlement Amount will increase by 5%); or (b) Defendant may elect to end the Class Period at an earlier date to avoid exceeding 112,584 workweeks (or 10% increase of 102,349 workweeks), and thus, avoid additional payment under this provision. (*Id.*)

16. The Settlement Agreement defines the “Class” as all current and former hourly non-exempt employees who worked for Defendant in California during the Class Period, which is the period from May 17, 2020 to September 9, 2025. (*Id.* at ¶¶ 1.5, 1.12.) The Settlement Agreement also defines “Aggrieved Employee” as all current and former hourly non-exempt employees who worked for Defendant in California during the PAGA Period, which is the period from May 17, 2023 to September 9, 2025. (Exhibit 1, Settlement Agreement, ¶¶ 1.4, 1.31.) The “Net Settlement Amount,” available for distribution to Participating Class Members, is the Gross Settlement Amount less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administration Expenses Payment. (*Id.* at ¶ 1.27.) The remainder is to be paid to Participating Class Members as Individual Class Payments. These amounts are detailed as follows:

- Class Counsel Fees Payment: Up to one-third (1/3) of the Gross Settlement Amount, or **\$483,333.33**, to Class Counsel as attorneys’ fees for the litigation and resolution of this Action (Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Counsel Litigation Expenses Payment: Reimbursement of actual expenses incurred to prosecute the Action, which is currently estimated not to exceed **\$30,000.00** (Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Representative Service Payment: Up to **\$5,000.00** to Plaintiff as an award for his service as the Class Representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Administration Expenses Payment: Up to **\$10,250.00** to the Administrator for its fees and

costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3); and

- PAGA Penalties: \$145,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Individual PAGA Payments (\$36,250.00) to be paid on a pro-rata basis to the Aggrieved Employees and 75% allocated to the LWDA (\$108,750.00) (“LWDA PAGA Payment”) (Exhibit 1, Settlement Agreement, ¶ 3.2.5.)

17. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **\$776,416.67**. Each Class Member’s share of the Net Settlement Amount (“Individual Class Payment”) will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each individual Participating Class Member’s Workweeks. (Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 715 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **\$1,085.90**. If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, none of the Gross Settlement Amount would revert to Defendant. (*Id.* at ¶ 3.1.) Instead, the remainder will be added to the Net Settlement Amount to be distributed to Participating Class Members. (*Id.*)

18. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to the Settlement Agreement as Exhibit A. (Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and challenge the number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant’s records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have sixty (60) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement,

1 and/or challenge the number of Workweeks and/or PAGA Pay Periods (“Response Deadline”).
2 (Exhibit 1, Settlement Agreement, ¶¶ 1.43, 7.4.4.)

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

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

14 20. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all
15 members is impractical. Class Members are all current and former hourly non-exempt employees who
16 worked for Defendant in California during the Class Period, which is the period from May 17, 2020
17 to September 9, 2025 (Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) At the time of mediation,
18 Defendant identified 715 Class Members based on a review of its payroll and personnel records. Thus,
19 there is numerosity and ascertainability.

20 21. Well-Defined Community of Interest. Plaintiff contends, and Defendant does not
21 dispute for settlement purposes only, that common issues of fact and law predominate as to each of
22 the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*, a
23 determination about Defendant’s alleged failure to pay wages and overtime due to allegedly common
24 off-the-clock work and improper rounding, failure to properly pay overtime, meal and rest premiums,
25 and sick pay at the correct rate of pay, failure to provide meal and rest breaks and premium wages for
26 non-compliant meal and rest breaks, failure to furnish accurate wage statements, failure to maintain
27 required payroll records, failure to timely pay wages including final wages, failure to timely pay
28 wages, failure to provide paid sick pay, and failure to reimburse necessary business expenses. Plaintiff

1 contends Defendant's practices affected Class Members in the same way and presents questions that
2 are suitable for common adjudication because all Class Members were subject to the same
3 employment policies and practices. The outcome of litigation in this matter depends upon questions
4 that are common to Class Members.

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

12 23. Adequacy. Plaintiff contends Plaintiff's interests are aligned with those of the Class
13 Members, as he has suffered the same injuries as the Class Members and has no conflicts of interest.
14 Plaintiff has not shrunken from this responsibility. Indeed, Plaintiff has devoted a substantial amount
15 of time and energy to litigating this Action and effectuating a settlement. Plaintiff contends, and
16 Defendant does not dispute for settlement purposes only, that Class Counsel are experienced in class
17 actions, have represented their clients and the Class zealously, and have no conflicts of interest.
18 Accordingly, the adequacy requirement is satisfied.

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

27 25. Plaintiff contends that class resolution is superior to other available methods for the
28 fair and efficient adjudication of the controversy, as there is little interest or incentive for Class

Members to individually control the prosecution of separate actions. Although the alleged injuries resulting from Defendant's policies and practices are allegedly real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually, this would result in 715 individual actions against Defendant. Here, the alternative methods of resolution are individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery.

The Settlement is Fair, Adequate, and Reasonable

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

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

27. The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification and proceeding on a PAGA-wide basis. Thus, while Plaintiff was prepared to litigate these claims through class

1 certification, and ultimately trial, success was far from certain. Assistance from a well-respected
2 mediator ensured that negotiations were non-collusive and well-informed.

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

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

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

10 29. Plaintiff's claims are based on Defendant's alleged failure to pay wages (including
11 overtime), failure to provide meal and rest periods and pay meal and rest period premiums, failure to
12 reimburse business expenses, failure to pay final wages when required, failure to timely pay wages,
13 failure to provide accurate wage statements, failure to pay all sick pay owed, and largely derivative
14 claims under the UCL and PAGA.

15 30. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
16 minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight
17 hours in a day and 40 hours in a week. Plaintiff alleges Defendant required Plaintiff and Class
18 Members to work post-shift by prepping, planning, and organizing their daily job assignments the
19 night before a shift. Plaintiff also alleges that Plaintiff and Class Members would have to coordinate
20 with office staff to make sure they had everything they needed to perform their job assignments prior
21 to the start of their shifts. Moreover, Plaintiff alleges that because Defendant's mobile phone
22 application timekeeping system did not record shift start and end times, Plaintiff and Class Members
23 were forced to record what jobsite they were working at and the total number of hours spent at the
24 jobsite. Plaintiff further alleges that it was Defendant's policy and practice to have employees round
25 their total hours worked to the nearest hour, which resulted in Plaintiff and Class Members not being
26 paid wages for all hours worked.

27 31. Defendant contends that Plaintiff and other Class Members are union members subject
28 to collective bargaining agreements and are statutorily exempt from overtime. Defendant also

1 contends that Plaintiff's overtime claim is preempted by the LMRA, and subject to dismissal because
2 Plaintiff failed to follow grievance and arbitration procedures under the CBA. Defendant contends
3 that even if Plaintiff's overtime claim could survive a motion to dismiss, that it instructed Class
4 Members to record all hours worked, that it paid Class Members for all reported hours worked, that
5 any off-the-work was performed without Defendant's knowledge and was de minimis, and that it paid
6 wages to Class Members at the proper rates. Defendant contends that off-the-clock work allegations
7 will be difficult to certify because Defendant has a lawful policy prohibiting off-the-clock work.
8 Defendant also argues that, given its written policies and practices, any unrecorded hours are likely
9 subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this
10 claim, Class Counsel applied a significant discount to damages based on this theory.

11 32. Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff
12 and Class Members. Plaintiff alleges that Plaintiff and Class Members were often required to work
13 through their meal periods. In addition, Plaintiff alleges that when meal periods were provided, they
14 were often interrupted with phone calls, resulting in short and on-duty meal periods.

15 33. Defendant contends that, like the overtime claim, Plaintiff and other Class Members
16 are statutorily exempt from meal periods. Defendant also contends that Plaintiff's meal period claim
17 is preempted by the LMRA, and subject to dismissal because Plaintiff failed to follow grievance and
18 arbitration procedures under the CBA. Defendant contends that even if Plaintiff's meal period claim
19 could survive a motion to dismiss, Class Members were authorized, permitted, and never denied the
20 opportunity to take their meal periods. Defendant further contends that the meal break claim requires
21 individualized inquiries, which would preclude class certification. (*Id.*) If Defendant's contentions
22 are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members
23 on the meal break claim.

24 34. Plaintiff also alleges that Defendant did not provide Class Members with paid 10-
25 minute rest breaks for every four hours or a major fraction thereof. Plaintiff contends that Plaintiff
26 and Class Members often had to work through their rest periods or were interrupted during their rest
27 periods.

28 ///

1 35. Defendant contends that, like the overtime and meal period claims, Plaintiff's rest
2 break claim is preempted by the LMRA, and subject to dismissal because Plaintiff failed to follow
3 grievance and arbitration procedures under the CBA. Defendant contends that even if Plaintiff's rest
4 break claim could survive a motion to dismiss, Defendant authorized and permitted Class Members
5 to take duty-free rest breaks of at least ten minutes for every four hours worked or major fraction
6 thereof. Defendant contends that there are no restrictions, in policy or practice, on where employees
7 can go during their rest breaks. Considering that, unlike meal periods, rest breaks need not be
8 recorded, these violations would likely be difficult to prove at trial and potentially depress the
9 damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts
10 to the rest break claim.

11 36. Further, Plaintiff alleges that Plaintiff and Class Members used their cellular phones
12 to conduct work-related activities for which they were not reimbursed. Additionally, Plaintiff
13 contends that Plaintiff and Class Members used their personal vehicles for work-related purposes and
14 incurred expenses including mileage, fuel, and/or wear and tear, for which they were not reimbursed.
15 Defendant maintains that Plaintiff and Class Members did not incur business expenses and/or were
16 properly reimbursed for all business expenses and further contend that any unreimbursed business
17 expenses were not necessary expenditures as required by Labor Code section 2802. Defendant also
18 maintains that individualized issues relating to this claim would preclude class certification.

19 37. Plaintiff alleges Defendant had a common policy and practice of systemically failing
20 to pay Class Members the requisite sick time pay, overtime pay, and meal and rest period premium
21 pay in accordance with California Law, at the employees' applicable regular rates of pay. Specifically,
22 Plaintiff alleges that Defendant paid sick pay, overtime pay, and meal and rest period premium pay
23 to Plaintiff and Class Members at the incorrect rate of pay. Defendant contends that such payments
24 owed to Plaintiff and Class Members were at the correct rate of pay and/or Plaintiff and other Class
25 Members were statutorily exempt.

26 38. As for the wage statement and waiting time penalties claims, Defendant contends that
27 these claims are merely derivative of the underlying claims and that Plaintiff and Class Members
28 would be unable to first establish liability for the underlying claims for the reasons described above.

Defendant further contends that even if they could first establish liability for the underlying claims, Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members. Thus, Defendant contends that the wage statement and waiting time penalties claims to have little to no value.

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

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

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

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

42. Plaintiff had not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed Class was certifiable is somewhat speculative. Absent a settlement, there

1 was a risk that there would not be a certified class at the time of trial, or if there were, it could consist
2 of a significantly smaller group of employees than the proposed Class, resulting in less overall
3 recovery.

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

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

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

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

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

24 46. The strength of the Plaintiff's case in light of the settlement amount is deemed by
25 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
26 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay minimum
27 wages and overtime, failed to provide meal and rest breaks and pay meal and rest period premiums,
28 failed to timely pay wages, failed to provide accurate wage statements, failed to pay all wages upon

1 termination, failed to pay all sick pay owed, and failed to reimburse for business expenses, all in
2 violation of California law. Plaintiff seeks related violations of California's Business & Professions
3 Code and penalties pursuant to Labor Code § 2699 *et seq.* Summary calculations for estimated
4 liability for each of these claims follow.

5 Failure to Pay Minimum and Overtime Wages:

6 47. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
7 minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight
8 hours in a day and 40 hours in a week. Plaintiff alleges Defendant required Plaintiff and Class
9 Members to work post-shift by prepping, planning, and organizing their daily job assignments the
10 night before a shift. Plaintiff also alleges that Plaintiff and Class Members would have to coordinate
11 with office staff to make sure they had everything they needed to perform their job assignments prior
12 to the start of their shifts. Moreover, Plaintiff alleges that because Defendant's mobile phone
13 application timekeeping system did not record shift start and end times, Plaintiff and Class Members
14 were forced to record what jobsite they were working at and the total number of hours spent at the
15 jobsite. Plaintiff further alleges that it was Defendant's policy and practice to have employees round
16 their total hours worked to the nearest hour, which resulted in Plaintiff and Class Members not being
17 paid wages for all hours worked.

18 48. Defendant contends that Plaintiff and other Class Members are union members subject
19 to collective bargaining agreements and are statutorily exempt from overtime. Defendant also
20 contends that Plaintiff's overtime claim is preempted by the LMRA, and subject to dismissal because
21 Plaintiff failed to follow grievance and arbitration procedures under the CBA. Defendant contends
22 that even if Plaintiff's overtime claim could survive a motion to dismiss, that it instructed Class
23 Members to record all hours worked, that it paid Class Members for all reported hours worked, that
24 any off-the-work was performed without Defendant's knowledge and was de minimis, and that it paid
25 wages to Class Members at the proper rates. Defendant contends that off-the-clock work allegations
26 will be difficult to certify because Defendant has a lawful policy prohibiting off-the-clock work.
27 Defendant also argues that, given its written policies and practices, any unrecorded hours are likely
28 subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this

1 claim, Class Counsel applied a significant discount to damages based on this theory.

2 49. Plaintiff's expert estimated Defendant's exposure on the unpaid wages claims to be
3 approximately \$2,343,371.00. However, given Defendant's defenses and the potential hurdles facing
4 certification of off-the-clock claims, Class Counsel applied a 90% discount, making for an adjusted
5 realistic exposure of \$234,337.10 for Defendant.

6 Meal Periods and Rest Breaks:

7 50. Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff and
8 Class Members. Plaintiff alleges that Plaintiff and Class Members were often required to work
9 through their meal periods. In addition, Plaintiff alleges that when meal periods were provided, they
10 were often interrupted with phone calls, resulting in short and on-duty meal periods.

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

19 52. Defendant contends that, like the overtime claim, Plaintiff and other Class Members are
20 statutorily exempt from meal periods. Defendant also contends that Plaintiff's meal period claim is
21 preempted by the LMRA, and subject to dismissal because Plaintiff failed to follow grievance and
22 arbitration procedures under the CBA. Defendant contends that even if Plaintiff's meal period claim
23 could survive a motion to dismiss, Class Members were authorized, permitted, and never denied the
24 opportunity to take their meal periods. Defendant further contends that the meal break claim requires
25 individualized inquiries, which would preclude class certification. (*Id.*) If Defendant's contentions
26 are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members
27 on the meal break claim.

28 ///

53. Plaintiff estimated Defendant's maximum exposure on the meal period claim at approximately \$6,389,154.00 (assuming a 20% violation rate for shifts of shifts greater than 5 hours). However, given Defendant's contentions, Class Counsel applied a 90% discount, making for an adjusted realistic exposure of \$638,915.40 for Defendant.

54. Rest Breaks: The same argument applied to rest breaks. Plaintiff also alleges that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. Plaintiff contends that Plaintiff and Class Members often had to work through their rest periods or were interrupted during their rest periods.

55. Defendant contends that, like the overtime and meal period claims, Plaintiff's rest break claim is preempted by the LMRA, and subject to dismissal because Plaintiff failed to follow grievance and arbitration procedures under the CBA. Defendant contends that even if Plaintiff's rest break claim could survive a motion to dismiss, Defendant authorized and permitted Class Members to take duty-free rest breaks of at least ten minutes for every four hours worked or major fraction thereof. Defendant contends that there are no restrictions, in policy or practice, on where employees can go during their rest breaks. Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim.

56. Plaintiff estimated Defendant's maximum liability exposure on the rest break period claim at approximately \$6,489,942.80 (assuming a 20% violation rate for shifts of at least 3.5 hours). However, given Defendant's contentions and considering a more realistic violation rate for the Class as well as the potential hurdles facing certification of rest break claims, Class Counsel applied a 90% discount making for an adjusted realistic exposure of \$648,994.28 for Defendant. Owing to the arguments above and the fact that the recording of rest periods is not required, this claim was substantially discounted and was not a major driver of exposure in this case.

Inaccurate Wage Statement Violations:

57. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for initial violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of

1 \$4,000 per employee. Plaintiff alleges Defendant issued wage statements to Plaintiff and the Class
2 Members that failed to include the total hours per pay period due to rounding and failed to accurately
3 account for all off-the-clock work and missed meal and rest premiums which Defendant knew or
4 reasonably should have known were owed to Plaintiff and Class Members.

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

11 59. Plaintiff's expert estimated Defendant's maximum total exposure on the section 226 claim
12 at approximately \$1,988,000.00 (497 employees from May 17, 2023 to March 24, 2025 with a
13 \$4,000.00 per employee maximum). After considering Defendant's contentions and the potential
14 class certification issues, Class Counsel discounted this amount by 95% to get an adjusted realistic
15 exposure of \$99,400.00.

16 Failure to Pay Final Wages at Termination or Separation:

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

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

27 62. Defendant challenged this claim under Labor Code § 203 with several arguments, including
28 that this claim is merely derivative of the other claims that lacked merit and that under Labor Code §

203, employers are only obligated to pay waiting-time penalties if they “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title 8, California Code of Regulations, § 13520 states: “A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.” Defendant argued that their good faith disputes and lack of willfulness would excuse its violations. Defendant maintained that because they had viable defenses in both law and fact, such penalties were subject to a three-year limitations period under Labor Code § 203(b).

63. Plaintiff’s expert estimated Defendant’s maximum total exposure on the section 203 claim at approximately \$4,710,946.00 (assuming 267 terminated employees during the relevant period and 30 days per employee and 8.7 hours per work day). Given the foregoing arguments, Class Counsel discounted this amount by 95% to get an adjusted realistic exposure of \$235,547.30.

Unpaid Sick Pay:

64. Labor Code Section 246 affords an employee “who works in California for 30 or more days within a year from the commencement of employment [] paid sick days . . . of not less than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.” Plaintiff alleges Defendant had a common policy and practice of systemically failing to pay Class Members the requisite sick time pay, overtime pay, and meal and rest period premium pay in accordance with California Law, at the employees’ applicable regular rates of pay. Specifically, Plaintiff alleges that Defendant paid sick pay, overtime pay, and meal and rest period premium pay to Plaintiff and Class Members at the incorrect rate of pay. Defendant contends that such payments owed to Plaintiff and Class Members were at the correct rate of pay and/or Plaintiff and other Class Members were statutorily exempt. Plaintiff’s expert estimated Defendant’s maximum total exposure on the unpaid sick pay claim at approximately \$87,468.00. After considering Defendant’s contentions and the potential class certification issues, Class Counsel discounted this amount by 90% to get an adjusted realistic exposure of \$8,746.80.

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1 Failure to Reimburse for Necessary Business Expenditures:

2 65. Under Labor Code § 22802(a) Defendant must indemnify Plaintiff and Class Members for
3 all necessary expenditures or losses incurred in direct consequence of the discharge of their duties.
4 As discussed above, Plaintiff alleges that Plaintiff and Class Members used their cellular phones to
5 conduct work-related activities for which they were not reimbursed. Additionally, Plaintiff contends
6 that Plaintiff and Class Members used their personal vehicles for work-related purposes and incurred
7 expenses including mileage, fuel, and/or wear and tear, for which they were not reimbursed.
8 Defendant maintains that Plaintiff and Class Members did not incur business expenses and/or were
9 properly reimbursed for all business expenses and further contend that any unreimbursed business
10 expenses were not necessary expenditures as required by Labor Code section 2802. Defendant also
11 maintains that individualized issues relating to this claim would preclude class certification.

12 66. Plaintiff estimated Defendant's total exposure on the unreimbursed business expenses
13 claim at approximately \$71,500.00 (\$100 x 715 Class Members). However, given Defendant's
14 contentions and the potential for the need for individualized inquiries, making class certification of
15 this claim difficult, Class Counsel applied a discount of 90% to get an adjusted realistic exposure of
16 \$7,150.00.

17 PAGA Penalties:

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

68. The provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code §§ 201-204, 210, 221, 226, 226.3, 226.7, 245.5, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2802, 2926, or 2927. PAGA penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald’s Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to \$375,000).).

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

70. Plaintiff estimated Defendant’s total exposure on the PAGA claim at approximately **\$3,665,800.00** (36,658 PAGA Pay Periods x \$100). However, Class Counsel also estimated any PAGA recovery would be substantially reduced and applied discounts in light of the countervailing arguments with regard to the other causes of action and the Court’s power to award “a lesser amount than the maximum civil liability.” Class Counsel applied a discount of 95% to get an adjusted realistic exposure of \$183,290.00. The PAGA allocation agreed upon by the Parties, therefore, was **\$145,000.00**, subject to the Court’s final approval. 75% of that amount (\$108,750.00) will be paid to

1 the LWDA out of the Gross Settlement Amount, and the remaining 25% (\$36,250.00) will be
2 distributed to the Aggrieved Employees.

3 Unfair Business Practices

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

8 Summary

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

15 73. Class Counsel applied reasonable and justified discounts, considering the facts and legal
16 contexts outlined above. These substantial discounts were necessary in light of Defendant's
17 contentions and denial of liability. In addition, Defendant argued that said employees were
18 dissimilarly situated co-workers, making the certification of all Class Members less than a certainty.
19 This Settlement, like most others, was the product of compromise. As addressed above, Plaintiff
20 estimated that Defendant faced approximately \$2,056,380.88 in total realistic exposure on Plaintiff's
21 main claims. The Gross Settlement Amount of \$1,450,000.00, therefore, represents a recovery for the
22 Class Members of approximately 70.51% of the total realistic exposure Plaintiff estimated Defendant
23 could face on these class-wide claims. Class Counsel submits that this is an optimal result for the
24 Class in light of all of the factors described above.

25 Class Counsel Fees Payment is Fair and Reasonable

26 74. Under the Settlement, Class Counsel requests, without opposition from Defendant, an
27 award of \$483,333.33 for attorneys' fees and up to \$30,000.00 for reasonable expenses incurred to
28 prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel for

1 the substantial work they have put into this case. Moreover, the risk they assumed by taking it in the
2 first place as they will not receive any compensation for their efforts until recovery is obtained for the
3 Class. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work
4 that they have already done and for all the work they will continue to do in carrying out and overseeing
5 the notification to Class Members, communicating with Class Members regarding their claims, and
6 assisting in the administration of the Settlement if it is preliminarily approved. The requested fee is
7 reasonable for the services provided to Class Members and for the benefits they are to receive.

8 **Class Representative Service Payment is Fair and Reasonable**

9 75. Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing
10 and helping to prosecute this action. Plaintiff spent significant time better apprising himself of his
11 rights, deciding whether remedial action should be taken and how it should be taken, searching for
12 attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and
13 the law.

14 76. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to
15 discuss every aspect of his case. Plaintiff provided Class Counsel with information about Defendant
16 and about the industry generally, produced and reviewed documents, identified witnesses, consulted
17 with Class Counsel regarding litigation strategy, participated in the mediation process, monitored the
18 progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. In
19 light of the foregoing, Class Counsel believes that the \$5,000.00 Class Representative Service
20 Payment to Plaintiff is fair and reasonable.

21 **Proposed Class Notice Provides Adequate Notice**

22 77. The notification procedure set out in the Settlement Agreement provides the greatest
23 likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement
24 as Exhibit A. Under the Settlement, not later than fifteen (15) days after the Court grants Preliminary
25 Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form
26 of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen
27 (14) days after receiving the Class Data, the Administrator will send to all Class Members identified
28 in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to the

1 Settlement Agreement as Exhibit A. (Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The Class Notice
2 includes a summary of the case and settlement terms and provides Class Members with detailed
3 instructions on how to exclude themselves, object to the settlement, and challenge the number of
4 Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant's records.
5 (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have sixty (60) days
6 from the mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class
7 Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement,
8 and/or challenge the number of Workweeks and/or PAGA Pay Periods ("Response Deadline").
9 (Exhibit 1, Settlement Agreement, ¶¶ 1.43, 7.4.4.) This is the best and most practicable way to ensure
10 the greatest possible number of Class Members will receive the Class Notice.

11 78. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims
12 involved, the terms of the Settlement, and their options thereunder. (Exhibit 1, Settlement Agreement,
13 Exhibit A, Class Notice). It provides for a specific procedure to seek exclusion from the Class, dispute
14 payments and Class Data, challenge Workweek and PAGA Pay Period data, and make objections to
15 the Settlement. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). In the Class Notice, Class
16 Members will also receive Class Counsel's contact information so they can speak to attorneys
17 conversant with the legal and factual issues involved in this case, as well as the contact information
18 for the Administrator. The efforts taken to ensure that Class Members receive the Class Notice and
19 are well informed about the settlement are reasonable and provide the best notice practicable under
20 the facts.

21 **Qualifications and Adequacy of Class Counsel**

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

27 80. D.Law is well-qualified and has ample experience, knowledge, and resources to act as
28 counsel and represent Plaintiff and the putative Class and Aggrieved Employees in this action. Our

1 practice is exclusively focused on employment matters and representing plaintiffs in wage and hour
2 actions with the same or similar causes of actions brought forth in the matter pending before this
3 Court.

4 81. D.Law has litigated and successfully resolved many wage and hour class action cases
5 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa
6 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.
7 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in
8 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in
9 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,
10 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-L-
11 AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,
12 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632
13 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
14 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
15 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
16 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of
17 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et al.
18 (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time
19 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.
20 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis
21 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v. Kloeckner
22 Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3 Technologies,
23 Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk Club, Inc.
24 (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont Colleges, Inc.
25 (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT Enterprises, Inc. dba
26 Precision Cabinets (Superior Court of California, County of Contra Costa MSC18-02404), Terry v.
27 TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court of the State of California,
28 County of Contra Costa, MSC18-00859), Roach v. Westcare California, Inc. (Superior Court of

1 California in Kern County, BCV-17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central
2 District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court
3 of California in Madera, MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court
4 of California in Los Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al.
5 (Superior Court of California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior
6 Court of California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of
7 California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court of
8 California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior Court
9 of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX Corporation dba
10 IMAC Worldwide Home (Superior Court of California in San Bernardino, CIVDS1820265),
11 Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles, 19STCV38096),
12 Singletary v. Motel 6 Operating LP, et al. (Southern District of California, 3:20-cv-0270-LAB-AHG),
13 Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868),
14 Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693),
15 Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-
16 CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda,
17 HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa
18 Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in
19 San Bernardino, CIVDS1915743), Virdi v. Absolute Security International (Superior Court of
20 California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California
21 in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc.
22 (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

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

1 from the plaintiff's side as well as the defense side, with the majority of my experience coming from
2 the plaintiff's side.

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

14 84. We understand the responsibilities owed as counsel to the class members and the aggrieved
15 employees we represent. The attorneys at D.Law thoroughly investigated the claims asserted in this
16 action and have remained committed to dedicating the resources necessary to represent the Class and
17 vigorously pursue their claims. Based upon my experience and understanding of the claims and
18 defenses in this action, I believe the settlement is fair, adequate, and reasonable for the Class Members
19 and Aggrieved Employees and all involved, and that the Settlement is well within the range of
20 reasonableness that would permit it to be finally approved. I am not aware of any conflict of interest
21 with Plaintiff or any other Class Member that would interfere with the duties as Class Counsel.

22 85. On March 23, 2026, Plaintiff submitted the Class Action and PAGA Settlement Agreement
23 and Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement
24 and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the
25 LWDA is attached hereto as **Exhibit 4.**

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

28 Executed this 23rd day of March 2026 in Pasadena, California



Enoch J. Kim

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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Fred Nazar (“Plaintiff”) and defendant Schindler Elevator Corporation (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1 “Action” means Plaintiff’s putative class and PAGA representative action alleging wage and hour violations against Defendant captioned *Fred Nazar v. Schindler Elevator Corporation* initiated on May 17, 2024 and pending in Superior Court of the State of California, County of San Diego.
- 1.2 “Administrator” means Apex Class Action, 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 Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all current and former hourly non-exempt employees who worked for Defendant in California during the PAGA Period.
- 1.5 “Class” means all current and former hourly non-exempt employees who worked for Defendant in California during the Class Period.
- 1.6 “Class Counsel” means D.Law, Inc.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, substantially in the form of that attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from May 17, 2020 to September 9, 2025.
- 1.13 “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of San Diego.
- 1.16 “Defendant” means named Defendant Schindler Elevator Corporation.
- 1.17 “Defense Counsel” means Orrick, Herrington & Sutcliffe, LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day immediately after the last day by which a Notice of Appeal of Judgment may be timely filed with the California Court of Appeal (i.e., the sixty-first calendar day following entry of Judgment), and no such appeal is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal’s decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21 “Gross Settlement Amount” means \$1,450,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraphs 8 and 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class

Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

- 1.22 "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.23 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.24 "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.25 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.26 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.27 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.28 "Non-Participating Class Member" means any Class Member who opts out of the Class Settlement by sending the Administrator a valid and timely written Request for Exclusion.
- 1.29 "Operative Complaint" means the First Amended Class and Representative Action Complaint that Plaintiff will file with the Court under Case number 37-2024-00022945-CU-OE-CTL, which adds claims against Defendant pursuant to Paragraph 2.6.
- 1.30 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31 "PAGA Period" means the period from May 17, 2023 to September 9, 2025.
- 1.32 "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).
- 1.33 "PAGA Notice" means Plaintiff's May 17, 2024 letter to Defendant and the LWDA, and any subsequent letter pursuant to Paragraph 2.6, providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$36,250.00) and the 75% to LWDA (\$108,750.00) in settlement of PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Fred Nazar, the named plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means Defendant and any parent, subsidiary, affiliated or related entities (including any companies, corporations, partnerships, alter egos, joint venturers, and actual or alleged joint employers), and each of their respective past, present and future agents, employees, servants, officers, directors, partners, members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity sponsors, (defined as a company/corporation and/or partnership that is, directly or indirectly, under common control with that Defendant or any of its parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, and consultants.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, (b) fax, email, or mail his or her Objection to the Settlement, or (c) fax, email, or mail Challenges to Workweeks and/or PAGA Pay Periods. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline to submit a Request for Exclusion from the Settlement, an Objection to the Settlement, or challenge Workweeks and/or PAGA Pay Periods.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

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

2. **RECITALS.**

2.1 On May 17, 2024, Plaintiff Nazar commenced a class action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5; (7) Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5; (8) Violation of Labor Code § 203; and (9) Violation of Business & Professions Code 17200 *et seq.* On June 21, 2024, Defendant filed its notice of removal of the class action removing the case to the United States District Court for the Southern District of California.

2.2 On July 23, 2024, Plaintiff filed a PAGA representative action against Defendant seeking civil penalties pursuant to PAGA for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code §§ 510 and 1198; (3) Meal Period Liability Under Labor Code §§ 226.7, 512(a); Rest Break Liability Under Labor Code §§ 226.7; (5) Violation of Labor Code § 226(a) and 1174; (6) Violation of Labor Code § 204; (7) Violation of Labor Code §§ 201, 203; and (8) Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5. On August 23, 2024, Defendant removed the PAGA action to the United States District Court for the Southern District of California.

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

2.4 On March 24, 2025, the Parties participated in an all-day mediation presided over by Tripper Ortman, Esq. which led to this Agreement to settle the Action.

2.5 Prior to mediation, Plaintiff obtained, through informal discovery, a 25% sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition, among other things. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“Dunk/Kullar”).

2.6 To effectuate the Settlement, the Parties will file a joint stipulation to remand the class action case to the San Diego County Superior Court within 14 days of their execution of this Agreement. Plaintiff will file a First Amended Class and Representative Action Complaint in the San Diego County Superior Court adding: (i) his PAGA representative claims; (ii) Class and PAGA claims for failure to pay sick leave pay or accurate sick leave pay; and (iii) Class and PAGA claims for failure to reimburse business expenses. Plaintiff will also file an amended PAGA notice with the LWDA adding claims (ii) and (iii) referenced above. The PAGA representative action pending in the United States

District Court for the Southern District of California will be dismissed with prejudice upon filing of the Operative Complaint that adds claims (i)-(iii) referenced above. The Court's approval of the Parties' stipulation to file the Operative Complaint is a material term of the Settlement. If the Court does not grant leave to file the Operative Complaint, the Parties shall work together in good faith to agree on a revised settlement agreement. If the Parties are unable to reach such an agreement, Plaintiff must not oppose removal back to federal court. Further, any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of the Settlement will likewise be treated as void from the beginning.

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

2.8 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant bears any liability to Plaintiff or the Class or the Aggrieved Employees on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraphs 8 and 9 below, Defendant promises to pay \$1,450,000.00 and no more as the Gross Settlement Amount. The Gross Settlement Amount is all-inclusive of all payments contemplated in the resolution of the Action, excluding any and all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments, which shall be separately paid to the Administrator. Within five (5) calendar days after the Effective Date, the Administrator will provide Defendant with a calculation of the amount of employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any

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

- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third, which is currently estimated to be \$483,333.33 and a Class Counsel Litigation Expenses Payment for reimbursement of actual expenses incurred, which is currently estimated not to exceed \$30,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$10,250.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,250.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by
 - (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and
 - (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1 Tax Allocation of Individual Class Payments. 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are

subject to tax withholding and will be reported on an IRS W-2 Form. The 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$145,000.00 to be paid from the Gross Settlement Amount, with 75% (\$108,750.00) allocated to the LWDA PAGA Payment and 25% (\$36,250.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties, \$36,250.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. In the event the Court determines that the amount of PAGA Penalties is insufficient, the necessary additional funds will be taken from the Gross Settlement Amount and Defendant will not be required to pay any additional monies if this occurs. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendant estimates there are approximately 715 Class Members who collectively worked a total of approximately 102,349 workweeks from May 17, 2020 to March 24, 2025, and approximately 497 Aggrieved Employees who worked a total of approximately 36,658 PAGA Pay Periods from May 17, 2023 to March 24, 2025.

4.2 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the

Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes 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 Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

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

4.4.2 The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (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 Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement

check to any Class Member whose original check was lost or misplaced, if requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or 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 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

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

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

5.1 **Plaintiff's Release.** Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint, and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 5.2 and 5.3, below. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

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

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

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendant and the Released Parties from all claims (whether in tort, contract, statute or otherwise), demands, rights, liabilities, penalties, fees, and causes of action that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including, but not limited to, failure to provide compliant meal periods and/or meal period premium pay; failure to authorize and permit compliant rest breaks and/or rest break premium pay; failure to pay all wages owed, including minimum, regular, overtime, double-time, and other wages; failure to pay for all time worked, including due to alleged off-the-clock work and rounding; failure to pay wages at the correct regular rate of pay; failure to pay timely wages during employment or upon separation; failure to provide accurate and/or itemized wage statements; failure to maintain records; failure to produce requested records; failure to pay sick leave pay or accurate sick leave pay; or failure to reimburse business expenses; or violation of Cal. Bus. & Prof. Code section 17200 et seq. by engaging in the foregoing conduct. Settlement Class Members' Released Claims include all claims for unpaid wages, statutory penalties, reimbursements, damages of any kind, interest, attorneys' fees, costs, injunctive relief, restitution, and any other equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Industrial Welfare Commission Wage Orders and the Fair Labor Standards Act (FLSA). Participating Class Members do not release claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside the Class Period.

5.3 Release of PAGA Claims: The State of California and the Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have released and forever discharged Defendant and the Released Parties from all claims, demands, rights, liabilities, penalties, fees, and causes of action under PAGA (Labor Code sections 2698, et seq.) that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaints and the PAGA notice, including but not limited to, alleged failure to provide compliant meal periods and/or meal period premium pay; failure to authorize and permit compliant rest breaks and/or rest break premium pay; failure to pay all wages owed, including minimum, regular, overtime, double-time, and other wages; failure to pay for all time worked, including due to alleged off-the-clock work and rounding; failure to pay wages at the correct regular rate of pay; failure to pay timely wages during employment or upon separation; failure to provide accurate and/or itemized wage statements; failure to maintain records; failure to produce requested records; failure to pay sick leave pay or accurate sick leave pay; or failure to reimburse business expenses. For avoidance of doubt, this PAGA release includes, but is not limited to, any alleged violations of Labor Code sections 201-204, 210, 221, 226, 226.3, 226.7, 245.5, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2802, 2926, or 2927. Aggrieved Employees do not release claims for vested benefits, wrongful termination, unemployment insurance,

disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and for Plaintiff to file a motion for preliminary approval ("Motion for Preliminary Approval").

6.1 **Plaintiff's Responsibilities.** Not later than seven (7) days prior to the deadline to file a Motion for Preliminary Approval of the Class Action and PAGA Settlement, Plaintiff will prepare and deliver to Defendant's Counsel all documents necessary for obtaining Preliminary Approval for their review and comment, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel attesting to its competency to represent the Class Members,; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator.

6.2 **Responsibilities of Counsel.** Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

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

7. **SETTLEMENT ADMINISTRATION.**

7.1 **Selection of Administrator.** The Parties have jointly selected Apex Class Action to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action

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

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

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

7.4 Notice to Class Members.

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

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

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

7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

- 7.4.5 If the Administrator, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone or by email, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, email address and telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.1 and 5.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon

entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination regarding the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the

Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement, the Class Data, and relevant supporting documentation on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

- 7.8.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendant estimates that 715 Class Members worked a total of approximately 102,349 workweeks from May 17, 2020 through March 24, 2025. If the total number of workweeks increases by more than 10% (*i.e.* an increase of 10,235 or more workweeks) during the Class Period, then, at Defendant's option, either (a) the Gross Settlement Amount will be increased in proportion to the number of total workweeks in the Class Period in excess of 10% (*e.g.*, if the final number of workweeks for the Class Period increases by 15% over 102,349 workweeks, the Gross Settlement Amount will increase by 5%); or (b) Defendant may elect to end the Class Period at an earlier date to avoid exceeding 112,584 workweeks (or 10% increase of 102,349 workweeks), and thus, avoid additional payment under this provision. If Defendant elects option (a) and the Gross Settlement Amount is increased, the Parties agree that the portion of the Gross Settlement Amount allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the Gross Settlement Amount after the upward adjustment required by this provision is implemented.
9. **DE-ESCALATOR CLAUSE.** If the collective number of workweeks represented by Class Members who submit valid and timely Requests for Exclusion exceed 10% of the total settlement workweeks before excluding opt outs, Defendant may reduce the Gross Settlement Amount in proportion to the percentage of workweeks represented by the excluded Class Members in excess of 10%. For example, if the total workweeks of excluded Class Members equals 15% of the total workweeks before excluding opt outs, Defendant may elect to decrease the Gross Settlement Amount by 5%.
10. **MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing for their review and comment. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone or by email, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents

in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members and/or Aggrieved Employees), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, 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.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. **ADDITIONAL PROVISIONS.**

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

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

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

- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
D.Law, Inc.
Emil Davtyan
emil@d.law
David Yeremian
d.yeremian@d.law
Roman Shkodnik
r.shkodnik@d.law
Emma Geesaman
e.geesaman@d.law
450 N Brand Blvd., Suite 840
Glendale, CA 91203

To Defendant:
Orrick, Herrington & Sutcliffe LLP
Lynne C. Hermle
lchermle@orrick.com
Anjali Prasad Vadillo
avadillo@orrick.com
1000 Marsh Road
Menlo Park, CA 94025

Orrick, Herrington & Sutcliffe LLP
Katie E. Briscoe
kbriscoe@orrick.com
400 Capitol Mall, 30th Floor
Sacramento, CA 95814

Orrick, Herrington & Sutcliffe LLP
Lauren R. Leibovitch
lleibovitch@orrick.com
120 Broadway, 4th Floor
Santa Monica, CA 90401

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

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement 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.

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

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

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Class Action and PAGA Settlement Agreement between Plaintiff, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

Dated: 10/20/2025, 2025

Fred Nazar

Signed by:

F73BB38C432949F

Dated: 10/23/2025, 2025

Schindler Elevator Corporation



By: Matthew Schultz

Title: VP & General Counsel - Commercial, Litigation & FQE

Approved as to form and content:

Dated: October 23, 2025

Orrick, Herrington & Sutcliffe LLP



Lynne C. Hermle
Katie E. Briscoe
Lauren R. Leibovitch
Anjali Prasad Vadillo
Attorneys for Defendant Schindler Elevator Corporation

Dated: October 21, 2025

D.LAW, INC.



David Yeremian, Esq.
Roman Shkodnik, Esq.
Emma Geesaman, Esq.
Attorneys for Plaintiff Fred Nazar

EXHIBIT A

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

Fred Nazar v. Schindler Elevator Corporation

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Schindler Elevator Corporation (“Schindler Elevator” or “Defendant”) for alleged wage and hour violations. The Action was filed by former Schindler Elevator employee Fred Nazar (“Plaintiff”) and seeks payment of (1) alleged back wages and other relief for a class of hourly nonexempt employees (“Class Members”) who worked for Schindler Elevator during the Class Period (May 17, 2020 to the earlier of the date on which the Court grants preliminary approval of the Settlement or September 9, 2025); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly nonexempt employees who worked for Schindler Elevator during the PAGA Period (May 17, 2023 to the earlier of the date on which the Court grants preliminary approval of the Settlement or September 9, 2025) (“Aggrieved Employees”).

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

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

The above estimates are based on Schindler Elevator’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ pay periods** during the

PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Schindler Elevator to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Schindler Elevator.

If you worked for Schindler Elevator during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

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

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Schindler Elevator that are covered by this Settlement (Released Class Claims and Released PAGA Claims, defined below).
You Can Opt-out of the Class Settlement	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-

but not the PAGA Settlement The Opt-out Deadline is _____	Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Schindler Elevator must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/PAGA Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Schindler Elevator’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Schindler Elevator employee. The Action accuses Schindler Elevator of violating California labor laws by failing to pay overtime wages, minimum wages, and wages due upon termination, failing to provide meal periods, rest breaks and accurate itemized wage statements, failing to maintain accurate time and wage records, failing to produce requested employment records, failing to reimburse business expenses, and failing to pay sick leave.. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”). Plaintiff is represented by attorneys in the Action: D.Law, Inc. (“Class Counsel.”)

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

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

So far, the Court has made no determination whether Schindler Elevator or Plaintiff is correct on the merits.

In the meantime, Plaintiff and Schindler Elevator hired an experienced mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Schindler Elevator have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Schindler Elevator does not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Schindler Elevator has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. Schindler Elevator Will Pay \$1,450,000.00 as the Gross Settlement Amount (Gross Settlement). Schindler Elevator has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Schindler Elevator will fund the Gross Settlement not more than 14 days after the Effective Date as defined in the Settlement Agreement.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - a. Up to \$483,333.33 (one-third of the Gross Settlement] to Class Counsel for attorneys’ fees and reimbursement of their litigation expenses, which is currently estimated not to exceed \$30,000.00. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- b. Up to \$5,000.00 to the Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel, and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- c. Up to \$10,250.00 to the Administrator for services administering the Settlement.
- d. Up to \$145,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and Schindler Elevator are asking the Court to approve an allocation of 30% of each Individual Class Payment to taxable wages ("Wage Portion") and 70% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Schindler Elevator will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member setting forth a Class Member's name, present address, email address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Schindler Elevator. You cannot opt-out of (or object) to the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert the Released PAGA Claims against Schindler Elevator as defined below.
7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Schindler Elevator have agreed that, in either case, the Settlement will be void: Schindler Elevator will not pay any money and Class Members will not release any claims against Schindler Elevator.
8. Administrator. The Court has appointed a neutral company, Apex Class Action (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion and written objections. The Administrator will also decide Class Member Challenges over Workweeks and/or PAGA Pay Periods, mail and remail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Schindler Elevator has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Schindler Elevator or any Released Parties for any Released Class Claims.

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

Released Class Claims. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Defendant and the Released Parties from all claims (whether in tort, contract, statute or otherwise), demands, rights, liabilities, penalties, fees, and causes of action that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaints, including, but not limited to, failure to provide compliant meal periods and/or meal period premium pay; failure to authorize and permit compliant rest breaks and/or rest premium pay; failure to pay all wages owed, including minimum, regular, overtime, double-time, and other wages; failure to pay for all time worked, including due to alleged off-the-clock work or rounding; failure to pay wages at the correct regular rate of pay; failure to pay timely wages during employment or upon separation; failure to provide accurate and/or itemized wage statements; failure to maintain records; failure to produce requested records; failure to pay sick leave pay or accurate sick leave pay; or failure to reimburse business expenses; or violation of Cal. Bus. & Prof. Code section 17200 et seq. by engaging in the foregoing conduct. Settlement Class Members' Released Claims include all claims for unpaid wages, statutory penalties, reimbursements, damages of any kind, interest, attorneys' fees, costs, injunctive relief, restitution, and any other equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Industrial Welfare Commission Wage Orders and the Fair Labor Standards Act (FLSA). Participating Class Members do not release claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside the Class Period.

"Released Parties" means Defendant and any parent, subsidiary, affiliated or related entities (including any companies, corporations, partnerships, alter egos, joint venturers, and actual or alleged joint employers), and each of their respective past, present and future agents, employees, servants, officers, directors, partners, members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity sponsors, (defined as a company/corporation and/or partnership that is, directly or indirectly, under common control with that Defendant or any of its parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, and consultants.

10. Aggrieved Employees' PAGA Release. After the Judgment is final and Schindler Elevator has fully funded the Gross Settlement and separately paid all employer payroll taxes, all Aggrieved Employees will be deemed to be barred from asserting PAGA claims against Schindler Elevator and Released Parties, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Schindler Elevator or any Released Party for any Released PAGA Claims.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

Released PAGA Claims. Plaintiff and the State of California with respect to Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have released and forever discharged Defendant and the Released Parties from all claims, demands, rights, liabilities, penalties, fees, and causes of action under PAGA (Labor Code sections 2698, *et seq.*) that were alleged, or reasonably could have been alleged, based on the facts stated in the operative complaints and the PAGA notice, including but not limited to, alleged failure to provide compliant meal periods and/or meal period premium pay; failure to authorize and permit compliant rest breaks and/or rest break premium pay; failure to pay all wages owed, including minimum, regular, overtime, double-time, and other wages; failure to pay for all time worked, including due to alleged off-the-clock work or rounding; failure to pay wages at the correct regular rate of pay; failure to pay timely wages during employment or upon separation; failure to provide accurate and/or itemized wage statements; failure to maintain records; failure to produce requested records; failure to pay sick leave pay or accurate sick leave pay; or failure to reimburse business expenses. For avoidance of doubt, this PAGA release includes, but is not limited to, any alleged violations of Labor Code sections 201-204, 210, 221, 226, 226.3, 226.7, 245.5, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2802, 2926, or 2927. Aggrieved Employees do not release claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$36,250 by the total number of PAGA pay periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period pay periods worked by each individual Aggrieved Employee.
3. Workweek/PAGA Pay Period Challenges. The number of Class workweeks you worked during the Class Period and the number of PAGA pay periods you worked during the PAGA Period, as recorded in Schindler Elevator's records, are stated in the first page of this Notice. You have until _____ to challenge the number of workweeks and/or pay periods credited to you. You can submit your challenge by

signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

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

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

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

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

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Schindler Elevator are asking the Court to approve. At least 16 days before the _____ Final Approval Hearing, Class

Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website <https://courtindex.sdcourt.ca.gov/CISPublic/casesearch>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff is too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Fred Nazar v. Schindler Elevator Corporation* and include your name, current address, email address, and telephone number, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department C-73 of the San Diego Superior Court, Hall of Justice located at 330 West Broadway San Diego, CA 92101. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom (<https://www.sdcourt.ca.gov/virtualhearings>). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Schindler Elevator and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the

Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://courtindex.sdcourt.ca.gov/CISPublic/casesearch>) and entering the Case Number for the Action, Case No. 37-2024-00022945-CU-OE-CTL. You can also make an appointment to personally review court documents in the Clerk's Office by calling (619) 450-7275.

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

Class Counsel:

David Yeremian

d.yeremian@d.law

Roman Shkodnik

r.shkodnik@d.law

Emma Geesaman

e.geesaman@d.law

D.Law, Inc.

450 N. Brand Blvd., Suite 840

Glendale, CA 91203

(818) 962-6465

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2

May 17, 2024

VIA ON-LINE SUBMISSION AND MAIL:

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

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

SCHINDLER ELEVATOR CORPORATION

c/o CT Corporation System
Agent for Service of Process
330 North Brand Blvd Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8112 0620 4173 9872 81

SCHINDLER ELEVATOR CORPORATION

20 Whippany Road
Morristown, NJ 07960
Certified Mail Tracking Number: 9414 8112 0620 4173 9879 22

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Fred Nazar v. Schindler Elevator Corporation***

Gentlepersons:

This office represents Plaintiff Fred Nazar (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

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

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along Plaintiff’s Class Action Complaint, which is attached hereto and incorporated by reference herein. The Complaint is being concurrently filed in San Diego County Superior Court and will be



assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

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

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee in California. Defendant Schindler Corporation manufactures, installs, maintains, and modernizes elevators, escalators, and moving walkways and maintains offices and facilities throughout California, including in San Diego, California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees").

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked.

Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, Defendants required Plaintiff and Aggrieved Employees to perform work related duties off the clock and to remain under Defendants' control during times when they should have been on break or otherwise off the clock. For example, Plaintiff would prep, plan and organize his daily job assignments the night before a shift and coordinate with office staff to make sure he had everything he needed to perform his job assignments. Upon information and belief, Defendants failed to compensate Aggrieved Employees for the time they were under control of Defendants before their scheduled shift start time.

Aggrieved Employees were also required to work during unpaid meal breaks, including immediately responding to work related calls and questions from coworkers after clocking out. Upon information and belief, Defendants failed to compensate Aggrieved Employees for the time they were under control of Defendants after clocking out.

Defendants had a policy and practice of rounding all time entries rather than paying Aggrieved Employees for all hours and minutes they actually worked, and generally did so to the detriment of Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Aggrieved Employees by systematically undercompensating them.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10)



and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take lawful meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. Additionally, Defendants followed a practice of requiring off the clock work in a manner that would impact when Aggrieved Employees were to receive meal periods and rest breaks, thus leading to further violations.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest breaks in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and practice of requiring Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

Defendants consistently failed to issue accurate itemized wage statements in writing as required by Labor Code § 226(a). Defendants failed to comply with Labor Code § 226(a) as the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks. Moreover, the wage statements provided to Employees by Defendants failed to accurately include the total hours worked in violation of Labor Code § 226(a)(2) as it reflected incorrect hours worked due to rounding, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged above.

Defendants have denied Aggrieved Employees the right to inspect and receive all of their payroll records, timecards, and personnel records, and have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

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PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the Class Action Complaint, the Aggrieved Employees complain of the following violations committed by Defendants:¹

Failure to Pay Minimum Wages

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

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

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

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

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.



proper wages and overtime for all hours worked.

As described more fully above, Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. In addition, Defendants unlawfully rounded time entries with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control.

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

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). The other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Aggrieved Employees are entitled to seek and recover statutory costs.

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

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

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, the uncompensated time, discussed above, caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day and/or 40 hours a week, entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight



hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off-the-clock work and rounding time entries, as addressed above. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off-the-clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employee's detriment. Defendants have also violated these provisions by requiring other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off-the-clock to complete their daily job duties.

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

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

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take lawful meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. Additionally, Defendants followed a practice of requiring off the clock work in a manner that would impact when Aggrieved Employees were to receive meal periods and rest breaks, thus leading to further violations.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their meal and rest periods due to the excessive



workload.

Defendants also failed to pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Aggrieved Employee’s effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of four (4) or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants’ policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) policy and practice of requiring Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

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

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants’ violation of



Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks. Moreover, the wage statements provided to Aggrieved Employees by Defendants failed to accurately include the total hours worked in violation of Labor Code § 226(a)(2) as it reflected incorrect hours worked due to rounding, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged above. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

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

Failure to Produce Requested Employment Records Under Labor Code § § 226 and 1198:

Pursuant to California Labor Code § 226, current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request



Pursuant to California Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Failure to comply with these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

Plaintiff sent written requests through his counsel to Defendants for their payroll records, timecards, and personnel records. However, Plaintiff did not receive all of his requested records within twenty-one calendar days from the date of the request. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely produce the required records requested by Plaintiff. On information and belief, Defendants' failure to provide Plaintiff with all of his requested employment records is not an isolated incident, but was instead consistent with Defendants' policy and practice that applied to Plaintiff and Aggrieved Employees.

Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§226 and 1198.5. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 226 and 1198.5 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 226, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not accurately recording start and end times for shifts and meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records accurately showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558,



1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

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

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

The Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699, et seq., including as follows:

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



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

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

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

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

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

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants and joint employers. To prevent the violations described in the Complaint and

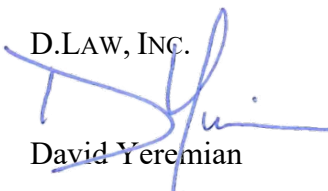


herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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

Regards,

D.LAW, INC.



David Yeremian

Cc: Schindler Elevator Corporation

D.LAW, INC.

Emil Davtyan (SBN 299363)

Emil@d.law

David Yeremian (SBN 226337)

d.yeremian@d.law

Roman Shkodnik (SBN 285152)

r.shkodnik@d.law

Amanda Fazio (SBN 346350)

a.fazio@d.law

880 E Broadway

Glendale, CA 91205

Telephone: (818) 962-6465

Fax: (818) 962-6469

Attorneys for Plaintiff FRED NAZAR, on behalf
of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FRED NAZAR, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

SCHINDLER ELEVATOR
CORPORATION, a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.:

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
7. Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5;
8. Violation of Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff FRED NAZAR (hereinafter “Plaintiff”), on behalf of himself and other similarly
2 situated non-exempt, hourly employees employed by Defendants in California (collectively,
3 “Employees”; individually, “Employee”), complains of Defendants, and each of them, as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff brings this action on behalf of himself and all current and former Employees
6 within the State of California who, at any time from four (4) years prior to the filing of this lawsuit,
7 are or were employed as non-exempt, hourly employees by Defendant SCHINDLER ELEVATOR
8 CORPORATION, a Delaware corporation, and DOES 1 through 50, inclusive (all defendants being
9 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them,
10 violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare
11 Commission (“IWC”), and the California Business & Professions Code, and seeks redress for these
12 violations.

13 2. Plaintiff is a resident of California and, during the time period relevant to this
14 Complaint, was employed by Defendants as a non-exempt hourly employee within the State of
15 California, county of San Diego. Upon information and belief, Defendant SCHINDLER
16 ELEVATOR CORPORATION manufactures, installs, maintains, and modernizes elevators,
17 escalators, and moving walkways and maintains offices and facilities throughout California,
18 including in San Diego, California. Plaintiff and the other Class members were employed by
19 Defendants as hourly, non-exempt Employees by Defendants throughout California. Plaintiff
20 worked at Defendants’ behest without being paid all wages due and without being provided all
21 required breaks. More specifically, Plaintiff and the other similarly situated Class members were
22 employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to
23 the same policies and practices (3) and endured similar violations at the hands of Defendants as the
24 other Employee Class members who served in similar and related positions.

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
26 and failed to record accurate time worked by these Employees, failed to pay all wages due and owing
27 at termination or resignation, and provided Plaintiff and the Class members with inaccurate wage
28 statements that prevented them from learning of these unlawful pay practices. Defendants also failed

1 to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were required to
2 remain under Defendants' control and were not provided with the opportunity to take full
3 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant SCHINDLER ELEVATOR CORPORATION is a Delaware corporation
6 with its principal address listed with the California Secretary of State in Morristown, New Jersey.
7 SCHINDLER ELEVATOR CORPORATION is listed as the employer on various documents issued
8 to Plaintiff, and upon information and belief Class members, such as Plaintiff's wage statements.
9 SCHINDLER ELEVATOR CORPORATION manufactures, installs, maintains, and modernizes
10 elevators, escalators, and moving walkways, and maintains offices and facilities throughout
11 California, including in San Diego, California, where it employed Plaintiff and the Employees.

12 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
14 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
15 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
16 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
17 liabilities giving rise to this lawsuit occurred, at least in part in San Diego County where Defendants
18 maintain a facility.

19 6. The true names and capacities, whether individual, corporate, associate, or whatever
20 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
21 Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil
22 Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated
23 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner
24 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
25 reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when
26 their identities become known.

27 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out

1 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
2 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
3 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised
4 control over the wages, hours or working conditions of Employees, created and implemented the
5 policies and practices that governed the employment of Plaintiff and the Class members and dictated
6 their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other
7 Employee Class members to work, or engaged them, thereby creating a common law employment
8 relationship with the Employee Class members. Therefore, Defendants, and each of them, employed
9 or jointly employed the Employee Class members.

10 **II. FACTUAL BACKGROUND**

11 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
12 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”).
13 During the period of four years prior to the filing of this action through its resolution, the Employee
14 Class members were employed by Defendants and worked in non-exempt positions at the direction
15 of Defendants in the State of California. Plaintiff and the Class members were either not paid by
16 Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime
17 rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages
18 due and owing, including by requiring off the clock work, rounding time entries, failing to provide
19 meal and rest breaks, and failing to furnish accurate wage statements, all in violation of various
20 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

21 9. During the course of Plaintiff and the Class members’ employment with
22 Defendants, they were not paid all wages they were owed, including for all work performed
23 (resulting in “off the clock” work) and for all their overtime hours worked. This has resulted in
24 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
25 Upon information and belief, Defendants employ other non-exempt, hourly employees in similar
26 jobs and related positions at their locations and facilities in California.

27 10. Defendants required Plaintiff and the Class members to perform work related duties
28 off the clock and to remain under Defendants’ control during times when they should have been on

1 break or otherwise off the clock. For example, Plaintiff would prep, plan and organize his daily job
2 assignments the night before a shift and coordinate with office staff to make sure he had everything
3 he needed to perform his job assignments. Upon information and belief, Defendants failed to
4 compensate Plaintiff and the Class members for the time they were under control of Defendants
5 while they were off-the-clock.

6 11. Plaintiff and, upon information and belief, the other Class members were also
7 required to work during unpaid meal breaks, including immediately responding to work related
8 matters and issues. Upon information and belief, Defendants failed to compensate Plaintiff and the
9 Class members for the time they were under control of Defendants after clocking out for meal
10 periods.

11 12. Defendants also followed a uniform policy and practice of rounding all time entries
12 rather than paying Plaintiff and the Class members for all hours and minutes they actually worked,
13 and generally did so to the detriment of the Employees, and these unlawfully rounded time entries
14 were inputted into Defendants' payroll system from which wage statements and payroll checks
15 were created. Defendants did so with the ostensible intent of paying Class members only for the
16 hours they were scheduled to work, rather than the hours they were actually under Defendants'
17 control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the
18 Class members by systematically undercompensating them.

19 13. By the off the clock work and time rounding addressed above, the Employees in the
20 Class began incurring overtime hours before the alleged eight hour mark when Defendants began
21 paying overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct
22 overtime rate of pay.

23 14. Plaintiff was therefore not paid for all hours worked at the required minimum,
24 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
25 and practice of requiring him to work off the clock and without pay. Defendants systematically
26 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates for
27 all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day
28 at the required double time rate. Upon information and belief, the Class members were bound by

1 similar scheduling and timekeeping policies and endured similar violations at Defendants' hands
2 as Plaintiff.

3 15. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
4 the Class members is and has been a direct consequence of Defendants' unlawful compensation
5 policies and practices, which upon information and belief applied uniformly to the Class members
6 working for Defendants throughout California. As a result of the above-described unlawful
7 requirements to work off the clock, rounding of time entries, failure to accurately record all hours
8 worked, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
9 members were not properly paid all wages earned and all wages owed to them by Defendants,
10 including when working more than eight hours in any given day and/or more than forty hours in
11 any given week. Defendants also failed to maintain timekeeping records for Plaintiff that would
12 permit him to discover the nature and extent of Defendants' unlawful practices.

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

21 17. Additionally, from at least four (4) years prior to the filing of this lawsuit and
22 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
23 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
24 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
25 not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one hour of
26 wages at each Employee's effective regular rate of pay, for each meal period that Defendants failed
27 to provide or deficiently provided. The above described off the clock work contributed to
28 Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Class

1 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).

2 18. Defendants similarly failed to authorize and permit Plaintiff and the employee Class
3 Members to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph
4 12 of the IWC Wage Order(s). Employees were restricted in their ability to take their full ten (10)
5 minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at
6 least four years prior to the filing of this lawsuit and continuing to the present, Defendants have
7 consistently failed to provide Employees with paid rest breaks of not less than ten minutes for every
8 work period of four or more consecutive hours, or major fraction thereof, nor did Defendants pay
9 Employees premium pay for each day on which requisite rest breaks were not provided or were
10 deficiently provided.

11 19. Defendants thus failed to provide all the legally required unpaid, off-duty meal
12 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
13 members, as required by the applicable Wage Order and Labor Code. Additionally, as addressed
14 above, Defendants followed a practice of requiring off the clock work in a manner that would impact
15 when Employees were to receive meal periods and rest breaks, thus leading to further violations.

16 20. As a result, Defendants' failure to provide Plaintiff and the Class members with all
17 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods
18 is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above,
19 Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's
20 effective regular rate of compensation for each meal period or rest break that Defendants failed to
21 provide or deficiently provided.

22 21. Defendants have also consistently failed to provide Class members with timely,
23 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
24 including by the above-described requirement of off the clock work, rounding, failure to pay all
25 overtime and double time wages owed, and failure to pay premium wages for unprovided or
26 otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with
27 precision for the unlawfully withheld wages and meal and rest period compensation owed to
28 Plaintiff and the Class, during the liability period, including because they did not implement and

1 preserve a record-keeping method as required for non-exempt employees by California Labor Code
2 §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and
3 belief, time clock punches were not maintained or were not accurately maintained for work shifts
4 and meal periods, which were automatically presumed by Defendants to have been lawfully
5 provided when they were not. Defendants also failed to accurately record and pay for all regular and
6 overtime hours worked and submitted by Plaintiff and the Class members.

7 22. Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately
8 reporting total hours worked and total wages earned by Plaintiff and the Class members, among
9 other requirements. Plaintiff and Class members are therefore entitled to penalties not to exceed
10 \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to
11 comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time
12 records showing when the employee begins and ends each work period, meal period, and wages
13 earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage
14 statements all deductions from payment of wages and accurately reporting total hours worked.

15 23. Additionally, Defendants have consistently failed to keep accurate time and wage
16 records as required by California wage-and-hour laws. Likewise, Defendants have had a consistent
17 policy of denying Class Members the right to inspect and receive all of their payroll records,
18 timecards, and personnel records.

19 24. As mentioned above, Defendants required Plaintiff and the Class members to work
20 hours off the clock for which they were not compensated and endure off the clock work during
21 interrupted or otherwise on-duty meal and rest periods. Defendants also rounded time and failed to
22 pay all wages owed for work conducted on a work shift and a workday, as addressed above.
23 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages
24 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
25 seventy-two hours of their resignation, as required by California wage-and-hour laws.

26 25. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
27 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.4, 226.7, 510, 512, 558,
28 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, and 1199.

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

III. CLASS ALLEGATIONS

27. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees by Defendants’ within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

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

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

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

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

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

f. Subclass 6. Payroll Records Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to keep accurate time and wage records as required by

1 California wage-and-hour laws.

2 g. Subclass 7. Requested Records Subclass. All Class members who were subject to
3 Defendants' policy and/or practice of failing to produce employment records upon request as
4 required by California wage-and-hour laws.

5 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
6 applicable limitations period, either voluntarily or involuntarily separated from their employment
7 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
8 termination.

9 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result
10 of Defendants' business acts and practices, to the extent such acts and practices are found to be
11 unlawful, deceptive, and/or unfair.

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

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

25 30. This action has been brought and may properly be maintained as a class action under
26 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
27 interest in this litigation and the proposed Class is easily ascertainable from the employment records
28 for Plaintiff and the Class members that Defendants are required to maintain under California law.

1 **A. Numerosity**

2 31. The potential members of the Class as defined are so numerous that joinder of all the
3 member of the class is impracticable. While the precise number of Class members has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the Class
6 definition within the State of California. Plaintiff alleges that Defendants' employment records will
7 provide information as to the number and location of all Class members.

8 **B. Commonality**

9 32. There are questions of law and fact common to the Class that predominate over any
10 questions affecting only individual Class members. The common questions are numerous and
11 substantial and flow from Defendants' uniform policies and/or practices of violating the California
12 Labor Code addressed above. As such, these common questions predominate over individual
13 questions concerning each individual Class Member's showing as to his or her eligibility for
14 recovery or as to the amount of damages. These common questions of law and fact include:

- 15 a. Whether Defendants failed to pay Employees minimum wages;
- 16 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 17 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
18 § 510;
- 19 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
20 Wage Orders, by failing to provide Employees with requisite meal periods or
21 premium pay in lieu thereof;
- 22 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
23 Orders, by failing to authorize and permit Employees to take requisite rest breaks or
24 provide premium pay in lieu thereof;
- 25 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
26 inaccurate wage statements;
- 27 g. Whether Defendants failed to keep accurate time and wage records;
- 28 h. Whether Defendants failed to produce employment records upon request;

- i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- j. Whether Defendants' conduct was willful;
- k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Class members' earned wages and work periods;
- l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- n. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

33. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

34. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

35. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee in the Class has been damaged and is entitled to recovery by

1 reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

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

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

28 39. Plaintiff and the Employees in the Class did not discover the fact that they were

1 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
2 ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by
3 jury, right to collectively organize and oppose unlawful pay practices under California law as well
4 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable
5 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered their
6 claims.

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

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

12 41. Defendants failed to pay Employees minimum wages for all hours worked.
13 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
14 would work hours and not receive all wages owed, including as alleged above in connection with
15 off the clock work, including all the time required to remain on duty and under Defendants' control
16 during breaks and due to the work demands placed upon them by Defendants' management, and
17 unlawful time rounding practices. To the extent any local wage ordinances were also applicable to
18 paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply
19 with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices
20 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
21 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
22 of the Class as to minimum wage pay.

23 42. In California, employees must be paid at least the then applicable state minimum
24 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
25 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally, pursuant
26 to California Labor Code § 204, other applicable laws and regulations, and public policy, an
27 employer must timely pay its employees for all hours worked. Defendants failed to do so.

28 43. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

1 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
2 employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable
3 minimum wage rate fixed by the commission for work during the relevant period is found in the
4 Wage Orders.

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

11 45. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
12 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
13 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
14 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
15 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
16 the absence of a contractually agreed upon one.

17 46. In committing these violations of the California Labor Code, Defendants
18 inaccurately recorded times that did not reflect their actual hours worked, miscalculated hours or
19 rates or otherwise underpaid the actual time worked by Plaintiff and other members of the Class,
20 including by requiring off the clock work and rounding time entries, as addressed in detail above.
21 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
22 in violation of the California Labor Code, the Industrial Welfare Commission requirements and
23 other applicable laws and regulations. As a result of these violations, Defendants also failed to timely
24 pay all wages earned in accordance with California Labor Code § 1194.

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

1 48. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
2 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial failure
3 to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
4 employee minimum wages.

5 49. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are further
6 entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest
7 thereon.

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

11 51. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
12 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
13 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's
14 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members
15 of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
16 as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent minimum wage compensation
18 is determined to be owed to the Class members who have terminated their employment, Defendants'
19 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also entitled
20 to waiting time penalties under California Labor Code § 203, which penalties are sought herein on
21 behalf of these Class members. Defendants' failure to timely pay all wages owed also violated Labor
22 Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of
23 inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not
24 in good faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory
25 costs.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

3 **(Against All Defendants)**

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

6 53. California Labor Code § 1194 provides that “any employee receiving less than the
7 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
8 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
9 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
10 may be maintained directly against the employer in an employee’s name without first filing a claim
11 with the Division of Labor Standards and Enforcement.

12 54. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
13 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
14 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
15 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
16 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one
17 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in
18 any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a
19 workweek.

20 55. Defendants had a consistent policy of not paying Employees wages for all hours
21 worked at their required regular, overtime, and double-time rates, including by requiring off the
22 clock work and rounding time entries, as addressed above, by under-reporting actual hours worked,
23 and by requiring Employees to do so as well.

24 56. Defendants, and each of them, have intentionally and improperly under-recorded
25 Employees’ hours, including Plaintiff’s, or required Plaintiff and the Class members to do so, or
26 otherwise caused them to work off the clock to avoid paying Plaintiff and the Class members all
27 earned and owed straight time and overtime wages and other benefits, in violation of the California
28 Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth

1 by the Division of Labor Standards and Enforcement. Defendants have also violated these
2 provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through
3 meal periods or remain under Defendants' control when they were required to be clocked out or to
4 otherwise work off the clock to complete their daily job duties and respond to demands from
5 customers and managers. Therefore, Employees were not properly compensated, nor were they paid
6 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given
7 week. Based on information and belief, Defendants did not make available to Employees a
8 reasonable protocol for correcting time records when Employees worked overtime hours or to fix
9 incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's
10 detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly
11 situated Class members to work through meal periods when they were required to be clocked out or
12 to otherwise work off the clock to complete their daily job duties.

13 57. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
14 regular wages owed and overtime compensation for all hours worked, as required by California
15 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
16 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
17 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

18 58. Additionally, Labor Code § 558(a) provides "any employer or other person acting
19 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
20 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
21 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
22 pay period for which the employee was underpaid in addition to an amount sufficient to recover
23 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
26 to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in this
27 section are in addition to any other civil or criminal penalty provided by law." Defendants have
28 violated provisions of the Labor Code regulating hours and days of work as well as the IWC Wage

1 Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor Code §
2 558.

3 59. Defendants' failure to pay compensation in a timely fashion also constituted a
4 violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly.
5 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
6 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
7 compensation earned by Employees. Each such failure to make a timely payment of compensation
8 to Employees constitutes a separate violation of California Labor Code § 204.

9 60. Employees have been damaged by these violations of California Labor Code §§ 204
10 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under Labor
11 Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100
12 for causing Employees "to work for longer hours than those fixed, or under conditions of labor
13 prohibited by an order of the commission" or if the employer pays "a wage less than the minimum
14 fixed by an order of the commission" or "violates...any provision of this chapter or any order or
15 ruling of the commission."

16 61. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
17 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
18 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
19 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
20 their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties
21 against Defendants, and each of them, and any additional sums as provided by the Labor Code
22 and/or other statutes.

23 **THIRD CAUSE OF ACTION**

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

25 **(Against All Defendants)**

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

28 63. Employees regularly worked shifts greater than five (5) hours and in some instances,

greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC Wage Order, an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second meal period of not less than thirty (30) minutes.

64. Defendants failed to provide Employees with meal periods as required under the Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required to work or to otherwise remain under Defendants' control during meal periods, or Defendants provided them after Employees worked beyond the fifth hour of their shifts or Employees otherwise had them shortened and interrupted by work demands and requirements to perform off the clock work and remain under Defendants' control. Furthermore, upon information and belief, on the occasions when Employees worked more than ten (10) hours in a given shift, they did so without receiving a second uninterrupted thirty (30) minute meal period as required by law.

65. Defendants thus failed to provide Plaintiff and the Class members with meal periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order, including by not providing them with the opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

66. Moreover, Defendants failed to compensate Employees for each meal period not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period in accordance with this section, 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. Additionally, as detailed above, when Defendants did pay meal period premiums, they did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

67. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or

1 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties
2 against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes
3 and applicable IWC Wage Order paragraphs.

4 **FOURTH CAUSE OF ACTION**

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

6 **(Against All Defendants)**

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

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

12 70. Employees consistently worked consecutive four (4) hour shifts and were generally
13 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit
14 them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage
15 Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each
16 consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks
17 of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were often
18 required to work or to otherwise remain under Defendants' control during rest periods, including by
19 responding to work requirements, and had breaks provided untimely as a result of the above
20 described off the clock work.

21 71. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders
22 provide that if an employer fails to provide an employee rest period in accordance with this section,
23 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the rest period is not provided. Defendants failed to do so.

25 72. Defendants, and each of them, have therefore intentionally and improperly denied
26 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
27 paragraph 12 of the applicable IWC Wage Orders.

28 73. Defendants failed to authorize and permit Plaintiff and the Class members to take

1 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
2 with an additional hour of pay at each Employee's regular rate for each day that Defendants failed
3 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12
4 and 20 of the applicable IWC Wage Orders. Additionally, as detailed above, when Defendants did
5 pay rest period premiums, they did so at the normal regular rate of pay without factoring in all forms
6 or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

7 74. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
8 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
9 hour of wages at their effective hourly rates of pay for each day worked without the required rest
10 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
11 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

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

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

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

24 77. Defendants failed to provide Plaintiff and the similarly situated Employee Class
25 members with accurate itemized wage statements in writing, as required by the Labor Code and
26 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
27 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
28 including for all overtime and double time hours worked, for deficient meal periods and rest breaks,

1 all of which Defendants knew or reasonably should have known were owed to the Employees, as
2 alleged above. Moreover, the wage statements provided to Employees by Defendants failed to
3 accurately include the total hours worked in violation of Labor Code § 226(a)(2) as it reflected
4 incorrect hours worked due to rounding, all of which Defendants knew or reasonably should have
5 known were owed to Employees, as alleged above. Thus, the wage statements provided to
6 Employees were confusing and required Employees to engage in discovery and refer to outside
7 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
8 Employees.

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

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

1 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a),
2 (ii) Which deductions the employer made from gross wages to determine the net wages paid to the
3 employee during the pay period, (iii) The name and address of the employer and, (iv) The name of
4 the employee and only the last four digits of his or her social security number or an employee
5 identification number other than a social security number. For purposes of Labor Code § 226(e)
6 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
7 able to readily ascertain the information without reference to other documents or information.

8 80. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
9 are required “to pay each employee, on the established payday for the period involved, not less than
10 the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §
11 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may
13 therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of
14 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
15 Wage Orders.

16 81. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code §
17 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
18 Class suffered injuries, including among other things confusion over whether they received all
19 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
20 them to make mathematical computations to analyze whether the wages paid in fact compensated
21 them correctly for all hours worked.

22 82. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
23 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
24 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
25 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
26 penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to an award
27 of costs and reasonable attorneys’ fees.

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SIXTH CAUSE OF ACTION
FAILURE TO MAINTAIN RECORDS UNDER LABOR CODE §§ 1174 and 1174.5
(Against All Defendants)

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

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

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

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

SEVENTH CAUSE OF ACTION
FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR
CODE §§ 226 and 1198
(Against All Defendants)

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

88. Pursuant to California Labor Code § 226, current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one calendar days from the date of the request.

89. Pursuant to California Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that

1 the employer maintains relating to the employee's performance or to any grievance concerning the
2 employee. Under this statute, upon written request from a current or former employee or his or her
3 representative, an employer must make the contents of those personnel records available for
4 inspection or provide a copy of the personnel records to the current or former employee, or his or
5 her representative, not later than thirty calendar days from the date the employer receives the written
6 request, subject to some limited exceptions. Failure to comply with these requests allows for a civil
7 penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

8 90. Plaintiff sent written requests through his counsel to Defendants for his payroll
9 records, timecards, and personnel records. However, Defendant did not provide the requested
10 records within twenty-one calendar days from the date of the request.

11 91. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
12 produce the required records requested by Plaintiff.

13 92. On information and belief, Defendants' failure to provide Plaintiff with all of his
14 requested employment records is not an isolated incident, but was instead consistent with
15 Defendants' policy and practice that applied to Plaintiff and Employees.

16 93. Pursuant to California Labor Code § 1198.5, Plaintiff and Class Members are entitled
17 to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

18 94. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven
19 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class
20 Members similarly situated are similarly entitled.

21 **EIGHTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 203**
23 **(Against All Defendants)**

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

26 96. Plaintiff and numerous Class members are no longer employed by Defendants; they
27 either quit Defendants' employ or were fired therefrom.

28 97. Defendants failed to pay these Employees all wages due and certain at the time of

1 termination or within seventy-two (72) hours of resignation.

2 98. The wages withheld from these Employees by Defendants remained due and owing
3 for more than thirty (30) days from the date of separation from employment.

4 99. Defendants failed to pay Plaintiff and the Class members without abatement, all
5 wages as defined by applicable California law. Among other things, these Employees were not paid
6 all regular and overtime wages, including by Defendants failing to pay for all hours worked or
7 requiring off the clock work or by unlawfully under-recording time entries to the detriment of
8 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
9 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
10 required time was willful within the meaning of Labor Code § 203.

11 100. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
12 are required "to pay each employee, on the established payday for the period involved, not less than
13 the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code §
14 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may
16 therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of
17 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
18 Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
19 are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than
20 those fixed, or under conditions of labor prohibited by an order of the commission" or if the
21 employer pays "a wage less than the minimum fixed by an order of the commission" or
22 "violates...any provision of this chapter or any order or ruling of the commission."

23 101. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
24 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of the
25 IWC Wage Orders as addressed above, including the requirement that an employee's wages shall
26 continue until paid for up to thirty (30) days from the date they were due.

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1 **NINTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 103. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
7 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
8 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful
9 to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public
10 interest within the meaning of Code of Civil Procedure § 1021.5.

11 104. Plaintiff is a “person” within the meaning of Business & Professions Code
12 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
13 relief, restitution, and other appropriate equitable relief.

14 105. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
15 practices. By the conduct alleged herein, Defendants’ practices were deceptive and fraudulent in
16 that Defendants’ policy and practice failed to provide the required amount of compensation for
17 missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for
18 all hours worked, due to systematic business practices as alleged herein that cannot be justified,
19 pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements
20 in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court
21 should issue injunctive and equitable relief, pursuant to California Business & Professions Code §
22 17203, including restitution of wages wrongfully withheld.

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

1 labor standards.

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

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

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

14 110. By the conduct alleged herein, Defendants have engaged and continue to engage in a
15 business practice which violates California and federal law, including but not limited to, the
16 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
17 Code including Sections 204, 221, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and 1198 for
18 which this Court should issue declaratory and other equitable relief pursuant to California Business
19 & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
20 constitute unfair competition, including restitution of wages wrongfully withheld.

21 111. As a proximate result of the above-mentioned acts of Defendants, Employees have
22 been damaged, in a sum to be proven at trial.

23 112. Unless restrained by this Court Defendants will continue to engage in such unlawful
24 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such
25 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use
26 by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the
27 Business & Professions Code, including but not limited to the disgorgement of such profits as may
28 be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

1 **IV. RELIEF REQUESTED**

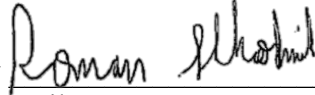
2 WHEREFORE, Plaintiff prays for the following relief:

- 3 1. For an order certifying this action as a class action;
- 4 2. For compensatory damages in the amount of the unpaid minimum wages for work
5 performed by Employees and unpaid overtime compensation from at least four (4) years prior to the
6 filing of this action, as may be proven;
- 7 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
8 thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 9 4. For compensatory damages in the amount of all unpaid wages, including overtime
10 and double-time pay, as may be proven;
- 11 5. For compensatory damages in the amount of the hourly wage made by Employees
12 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
13 years prior to the filing of this action, as may be proven;
- 14 6. For compensatory damages in the amount of the hourly wage made by Employees
15 for each day requisite rest breaks were not provided or were deficiently provided where no premium
16 pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
- 17 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 18 8. For penalties pursuant to Labor Code § 226.3, as may be proven;
- 19 9. For penalties pursuant to Labor Code §§ 1174.5 and 1198.5, as may be proven;
- 20 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired
21 in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 22 11. For restitution for unfair competition pursuant to Business & Professions Code
23 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 24 12. For an order enjoining Defendants and their agents, servants, and employees, and all
25 persons acting under, in concert with, or for them, from acting in derogation of any rights or duties
26 adumbrated in this Complaint;
- 27 13. For other wages and penalties under the Labor Code as may be proven;
- 28 14. For all general, special, and incidental damages as may be proven;

- 1 15. For an award of pre-judgment and post-judgment interest;
2 16. For an award providing for the payment of the costs of this suit;
3 17. For an award of attorneys' fees; and
4 18. For such other and further relief as this Court may deem proper and just.

5
6 DATED: May 17, 2024

D.LAW, INC.

7
8 By 
9 Emil Davtyan
10 David Yeremian
11 Roman Shkodnik
12 Amanda Fazio
13 Attorneys for Plaintiff
14 FRED NAZAR
15 and the putative class

DEMAND FOR JURY TRIAL

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

DATED: May 17, 2024

D.LAW, INC.

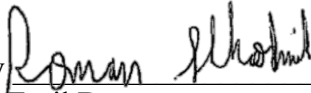
By 
Emil Davtyan
David Yeremian
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
FRED NAZAR
and the putative class

EXHIBIT 3

December 11, 2025

VIA ON-LINE SUBMISSION AND MAIL:

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

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

SCHINDLER ELEVATOR CORPORATION

c/o CT Corporation System
Agent for Service of Process
330 North Brand Blvd Suite 700
Glendale, CA 91203
Certified Mail Tracking Number: 9414 8111 0549 5879 8835 60

SCHINDLER ELEVATOR CORPORATION

20 Whippany Road
Morristown, NJ 07960
Certified Mail Tracking Number: 9414 8111 0549 5879 8842 91

LWDA No. 1029116-24

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Fred Nazar v. Schindler Elevator Corporation***

Gentlepersons:

This office represents Plaintiff Fred Nazar (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245, *et seq.*, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*; and 2802; and provisions of the Industrial Welfare Commission (IWC) Wage Order(s).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”) and to supplement and amend Plaintiff’s original PAGA Notice to the LWDA submitted on May 17, 2024 (LWDA Case No. LWDA-CM-1029116-24). Plaintiff concurrently filed a class action complaint in San Diego County Superior Court alleging various wage and hour violations committed by Defendant Schindler Elevator Corporation. On July 23, 2024, Plaintiff filed a PAGA representative complaint in San Diego County Superior Court. Plaintiff would now like to add claims for failure to pay sick pay in violation of Labor Code §§ 245 *et seq.* and 246, and failure to reimburse necessary business expenditures in violation of Labor Code § 2802 against Defendant Schindler Elevator Corporation, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).



Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along with a copy of Plaintiff's First Amended Class Action Complaint, which is attached hereto and to be filed upon being granted leave by the Court to do so. The First Amended Complaint allegations and claims are incorporated into this Notice Letter.

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

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee in California. Defendant Schindler Corporation manufactures, installs, maintains, and modernizes elevators, escalators, and moving walkways and maintains offices and facilities throughout California, including in San Diego, California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as "Aggrieved Employees").

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked.

Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, Defendants required Plaintiff and Aggrieved Employees to perform work related duties off the clock and to remain under Defendants' control during times when they should have been on break or otherwise off the clock. For example, Plaintiff would prep, plan and organize his daily job assignments the night before a shift and coordinate with office staff to make sure he had everything he needed to perform his job assignments. Upon information and belief, Defendants failed to compensate Aggrieved Employees for the time they were under control of Defendants before their scheduled shift start time.

Aggrieved Employees were also required to work during unpaid meal breaks, including immediately responding to work related calls and questions from coworkers after clocking out. Upon information and belief, Defendants failed to compensate Aggrieved Employees for the time they were under control of Defendants after clocking out.

Defendants had a policy and practice of rounding all time entries rather than paying Aggrieved Employees for all hours and minutes they actually worked, and generally did so to the detriment of Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control.



Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Aggrieved Employees by systematically undercompensating them.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

Additionally, Defendants also paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay, overtime pay, and meal period and rest break premiums, were calculated and paid.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take lawful meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. Additionally, Defendants followed a practice of requiring off the clock work in a manner that would impact when Aggrieved Employees were to receive meal periods and rest breaks, thus leading to further violations.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest breaks in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and practice of requiring Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

Defendants consistently failed to issue accurate itemized wage statements in writing as required by Labor Code § 226(a). Defendants failed to comply with Labor Code § 226(a) as the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks. Moreover, the wage statements provided to Employees by Defendants failed to accurately include the total hours worked in violation of Labor Code § 226(a)(2) as it reflected incorrect hours worked due to rounding, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged above.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing his required job duties including but not limited to the cost of personal cell phone usage, cost of vehicle-related expenses (including without limitation, mileage, fuel, and/or wear and tear), and cost of equipment and tools, which was necessary to perform his duties under



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

Defendants have denied Aggrieved Employees the right to inspect and receive all of their payroll records, timecards, and personnel records, and have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

Moreover, Defendants failed to pay Aggrieved Employees all wages owed at the time of their termination or within seventy-two (72) hours of their resignation as required by Labor Code §§ 201-203. Defendants also consistently failed to pay Aggrieved Employees all wages due on a semi-monthly basis.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the Class Action Complaint, the Aggrieved Employees complain of the following violations committed by Defendants:¹

Failure to Pay Minimum Wages

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

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines “Hours Worked” as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to work for a

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.



lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

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

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked.

As described more fully above, Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. In addition, Defendants unlawfully rounded time entries with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control.

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

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). The other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Aggrieved Employees are entitled to seek and recover statutory costs.



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

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

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, the uncompensated time, discussed above, caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day and/or 40 hours a week, entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

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

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Aggrieved Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Aggrieved Employee's detriment. Defendants have also violated these provisions by requiring other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off-the-clock to complete their daily job duties.

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



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

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take lawful meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. Additionally, Defendants followed a practice of requiring off the clock work in a manner that would impact when Aggrieved Employees were to receive meal periods and rest breaks, thus leading to further violations.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy and practice of not scheduling each meal period as part of each work shift; and (2) Defendants' policy and practice of requiring putative Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of four (4) or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) policy and practice of requiring Aggrieved Employees to continue working through their rest breaks due to the excessive workload.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are



entitled to damages in an amount equal to one hour of wages at their regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

Failure to Comply with Labor Code §§ 245 *et seq.*, 246 and 246.5

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed to provide Employees with the required amount of paid sick time and have failed to compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid shift differentials, nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees at a lower rate, in violation of the law. As a result of Defendants' conduct, Defendants have violated California Labor Code §§ 245 *et seq.* and 246. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 245 *et seq.* and 246. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 245 *et seq.* and 246 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.*, 246, 246.5, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in



writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks. Moreover, the wage statements provided to Aggrieved Employees by Defendants failed to accurately include the total hours worked in violation of Labor Code § 226(a)(2) as it reflected incorrect hours worked due to rounding, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged above. The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Aggrieved Employees.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

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

Failure to Produce Requested Employment Records Under Labor Code § § 226 and 1198:

Pursuant to California Labor Code § 226, current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request

Pursuant to California Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or



her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Failure to comply with these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

Plaintiff sent written requests through his counsel to Defendants for their payroll records, timecards, and personnel records. However, Plaintiff did not receive all of his requested records within twenty-one calendar days from the date of the request. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely produce the required records requested by Plaintiff. On information and belief, Defendants' failure to provide Plaintiff with all of his requested employment records is not an isolated incident, but was instead consistent with Defendants' policy and practice that applied to Plaintiff and Aggrieved Employees.

Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§226 and 1198.5. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code §§ 226 and 1198.5 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code §§ 226, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not accurately recording start and end times for shifts and meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records accurately showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiff and Aggrieved Employees to incur necessary



business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, the cost of personal cell phone usage, cost of vehicle-related expenses (including without limitation, mileage, fuel, and/or wear and tear), and cost of equipment and tools, which was necessary to perform their duties under Defendants' employ and which was used throughout the course of Plaintiff's and Aggrieved Employees' duties under Defendants' employ in violation of Labor Code § 2802. Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiffs seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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



The Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 245 *et seq.*, 246, 246.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802 including as follows:

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

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

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

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

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil



penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days: For Defendants' failure to provide Employees with all their required and earned sick days in violation of Labor Code §§ 245 *et seq.*, 246, and 246.5, the civil and statutory penalties available and applicable under Labor Code §§ 245 *et seq.* and 246, 1194.2, 1197.1, 1198, 1199, 2699.3(b), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

We have been constrained to initially move forward with the filing of the attached First Amended Complaint, alleging the causes of action discussed herein. This letter and the attached First Amended Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provision of the Labor Code and related provisions Plaintiff alleges have been violated by Defendants. Any further action by the LWDA would be unnecessary given that the LWDA declined to investigate after the original PAGA Notice Letter, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Schindler Elevator Corporation and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA permit the existing PAGA action to proceed with the addition of sick pay and failure to reimburse necessary expenditures claims.

Regards,

D.LAW, INC.

A handwritten signature in black ink that reads "Roman Shkodnik".

Roman Shkodnik

Cc: Schindler Elevator Corporation

D.LAW, INC.

Emil Davtyan (SBN 299363)

Emil@d.law

David Yeremian (SBN 226337)

d.yeremian@d.law

Roman Shkodnik (SBN 285152)

r.shkodnik@d.law

Emma Geesaman (SBN 352715)

e.geesaman@d.law

450 N Brand Blvd., Suite 840

Glendale, CA 91205

Telephone: (818) 962-6465

Fax: (818) 962-6469

Attorneys for Plaintiff FRED NAZAR, on behalf
of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FRED NAZAR, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

SCHINDLER ELEVATOR
CORPORATION, a Delaware corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2024-00022945-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:

Hon. Joel Wohlfeil

Dept.: C-73

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code §§ 510 and 1198;
3. Meal Period Liability Under Labor Code § 226.7, 512(a);
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226;
6. Failure to Maintain Records Under Labor Code §§ 1174 and 1174.5;
7. Failure to Produce Requested Records Under Labor Code §§ 226 and 1198.5;
8. Violation of Labor Code §§ 201, 202, 203, 204;
9. Failure to Comply with Labor Code §§ 245 *et seq.*, 246, and 246.5;
10. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
11. Violation of Business & Professions Code § 17200 *et seq.*; and

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12. Penalties Pursuant to Labor Code § 2699, *et*
seq.
DEMAND FOR JURY TRIAL

1 Plaintiff FRED NAZAR (hereinafter “Plaintiff”), on behalf of himself and other similarly
2 situated non-exempt, hourly employees employed by Defendants in California (collectively,
3 “Employees”; individually, “Employee”), complains of Defendants, and each of them, as follows:

4 I. INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former Employees
6 within the State of California who, at any time from four (4) years prior to the filing of this lawsuit,
7 are or were employed as non-exempt, hourly employees by Defendant SCHINDLER ELEVATOR
8 CORPORATION, a Delaware corporation, and DOES 1 through 50, inclusive (all defendants being
9 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them,
10 violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare
11 Commission (“IWC”), and the California Business & Professions Code, and seeks redress for these
12 violations.

13 2. Plaintiff is a resident of California and, during the time period relevant to this
14 Complaint, was employed by Defendants as a non-exempt hourly employee within the State of
15 California, county of San Diego. Upon information and belief, Defendant SCHINDLER
16 ELEVATOR CORPORATION manufactures, installs, maintains, and modernizes elevators,
17 escalators, and moving walkways and maintains offices and facilities throughout California,
18 including in San Diego, California. Plaintiff and the other Class members were employed by
19 Defendants as hourly, non-exempt Employees by Defendants throughout California. Plaintiff
20 worked at Defendants’ behest without being paid all wages due and without being provided all
21 required breaks. More specifically, Plaintiff and the other similarly situated Class members were
22 employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to
23 the same policies and practices (3) and endured similar violations at the hands of Defendants as the
24 other Employee Class members who served in similar and related positions.

25 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
26 and failed to record accurate time worked by these Employees, failed to pay all wages due and owing
27 at termination or resignation, and provided Plaintiff and the Class members with inaccurate wage
28 statements that prevented them from learning of these unlawful pay practices. Defendants also failed

1 to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were required to
2 remain under Defendants' control and were not provided with the opportunity to take full
3 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
4 applicable paragraphs of the IWC Wage Orders.

5 4. Defendant SCHINDLER ELEVATOR CORPORATION is a Delaware corporation
6 with its principal address listed with the California Secretary of State in Morristown, New Jersey.
7 SCHINDLER ELEVATOR CORPORATION is listed as the employer on various documents issued
8 to Plaintiff, and upon information and belief Class members, such as Plaintiff's wage statements.
9 SCHINDLER ELEVATOR CORPORATION manufactures, installs, maintains, and modernizes
10 elevators, escalators, and moving walkways, and maintains offices and facilities throughout
11 California, including in San Diego, California, where it employed Plaintiff and the Employees.

12 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
14 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
15 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
16 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
17 liabilities giving rise to this lawsuit occurred, at least in part in San Diego County where Defendants
18 maintain a facility.

19 6. The true names and capacities, whether individual, corporate, associate, or whatever
20 else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
21 Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil
22 Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated
23 herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner
24 for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to
25 reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when
26 their identities become known.

27 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out

1 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
2 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
3 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised
4 control over the wages, hours or working conditions of Employees, created and implemented the
5 policies and practices that governed the employment of Plaintiff and the Class members and dictated
6 their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other
7 Employee Class members to work, or engaged them, thereby creating a common law employment
8 relationship with the Employee Class members. Therefore, Defendants, and each of them, employed
9 or jointly employed the Employee Class members.

10 **II. FACTUAL BACKGROUND**

11 8. The Employees who comprise the Class, including Plaintiff, are non-exempt
12 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”).
13 During the period of four years prior to the filing of this action through its resolution, the Employee
14 Class members were employed by Defendants and worked in non-exempt positions at the direction
15 of Defendants in the State of California. Plaintiff and the Class members were either not paid by
16 Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime
17 rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages
18 due and owing, including by requiring off the clock work, rounding time entries, failing to provide
19 meal and rest breaks, and failing to furnish accurate wage statements, all in violation of various
20 provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

21 9. From at least four (4) years prior to the filing of this lawsuit and continuing to the
22 present, Defendants paid Plaintiff and Employees nondiscretionary commission, incentive pay,
23 shift differentials, and/or nondiscretionary bonuses. However, Defendants failed to incorporate all
24 remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or
25 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
26 sick pay, overtime, meal period and rest break premiums. Additionally, Defendants failed to
27 incorporate the prevailing wage rate into the regular rate of pay used to calculate sick pay, overtime,
28 meal period and rest break premiums. Therefore, during times when Plaintiff and Employees

1 worked overtime and received nondiscretionary commissions, incentive pay, shift differentials,
2 nondiscretionary bonuses, and/or prevailing wages, Defendants failed to pay all sick pay, overtime
3 pay, meal period and rest break premiums, by paying a lower overtime rate than required.

4 10. During the course of Plaintiff and the Class members' employment with
5 Defendants, they were not paid all wages they were owed, including for all work performed
6 (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in
7 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.
8 Upon information and belief, Defendants employ other non-exempt, hourly employees in similar
9 jobs and related positions at their locations and facilities in California.

10 11. Defendants required Plaintiff and the Class members to perform work related duties
11 off the clock and to remain under Defendants' control during times when they should have been on
12 break or otherwise off the clock. For example, Plaintiff would prep, plan and organize his daily job
13 assignments the night before a shift and coordinate with office staff to make sure he had everything
14 he needed to perform his job assignments. Upon information and belief, Defendants failed to
15 compensate Plaintiff and the Class members for the time they were under control of Defendants
16 while they were off-the-clock.

17 12. Plaintiff and, upon information and belief, the other Class members were also
18 required to work during unpaid meal breaks, including immediately responding to work related
19 matters and issues. Upon information and belief, Defendants failed to compensate Plaintiff and the
20 Class members for the time they were under control of Defendants after clocking out for meal
21 periods.

22 13. Defendants also followed a uniform policy and practice of rounding all time entries
23 rather than paying Plaintiff and the Class members for all hours and minutes they actually worked,
24 and generally did so to the detriment of the Employees, and these unlawfully rounded time entries
25 were inputted into Defendants' payroll system from which wage statements and payroll checks
26 were created. Defendants did so with the ostensible intent of paying Class members only for the
27 hours they were scheduled to work, rather than the hours they were actually under Defendants'
28 control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the

1 Class members by systematically undercompensating them.

2 14. By the off the clock work and time rounding addressed above, the Employees in the
3 Class began incurring overtime hours before the alleged eight hour mark when Defendants began
4 paying overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct
5 overtime rate of pay.

6 15. Plaintiff was therefore not paid for all hours worked at the required minimum,
7 overtime and double time wage rates due to Defendants' uniformly applied and unlawful policy
8 and practice of requiring him to work off the clock and without pay. Defendants systematically
9 underpaid Plaintiff and the Class members by failing to pay them at the required overtime rates for
10 all hours over eight in a work shift or over forty in a work week, and all hours over twelve in a day
11 at the required double time rate. Upon information and belief, the Class members were bound by
12 similar scheduling and timekeeping policies and endured similar violations at Defendants' hands
13 as Plaintiff.

14 16. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
15 the Class members is and has been a direct consequence of Defendants' unlawful compensation
16 policies and practices, which upon information and belief applied uniformly to the Class members
17 working for Defendants throughout California. As a result of the above-described unlawful
18 requirements to work off the clock, rounding of time entries, failure to accurately record all hours
19 worked, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class
20 members were not properly paid all wages earned and all wages owed to them by Defendants,
21 including when working more than eight hours in any given day and/or more than forty hours in
22 any given week. Defendants also failed to maintain timekeeping records for Plaintiff that would
23 permit him to discover the nature and extent of Defendants' unlawful practices.

24 17. Therefore, from at least four years prior to the filing of this lawsuit and continuing
25 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
26 hours worked and failing to pay minimum wages for all time worked, as required by California law.
27 Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
28 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation

1 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
2 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
3 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

4 18. Additionally, from at least four (4) years prior to the filing of this lawsuit and
5 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
6 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
7 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
8 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
9 wages at each Employee’s effective regular rate of pay, for each meal period that Defendants failed
10 to provide or deficiently provided. The above described off the clock work contributed to
11 Defendants’ common policy of failing to provide lawful meal periods to Plaintiff and the Class
12 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).

13 19. Defendants similarly failed to authorize and permit Plaintiff and the employee Class
14 Members to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph
15 12 of the IWC Wage Order(s). Employees were restricted in their ability to take their full ten (10)
16 minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, from at
17 least four years prior to the filing of this lawsuit and continuing to the present, Defendants have
18 consistently failed to provide Employees with paid rest breaks of not less than ten minutes for every
19 work period of four or more consecutive hours, or major fraction thereof, nor did Defendants pay
20 Employees premium pay for each day on which requisite rest breaks were not provided or were
21 deficiently provided.

22 20. Defendants thus failed to provide all the legally required unpaid, off-duty meal
23 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
24 members, as required by the applicable Wage Order and Labor Code. Additionally, as addressed
25 above, Defendants followed a practice of requiring off the clock work in a manner that would impact
26 when Employees were to receive meal periods and rest breaks, thus leading to further violations.

27 21. As a result, Defendants’ failure to provide Plaintiff and the Class members with all
28 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods

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

5 22. Defendants have also consistently failed to provide Class members with timely,
6 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
7 including by the above-described requirement of off the clock work, rounding, failure to pay all
8 overtime and double time wages owed, and failure to pay premium wages for unprovided or
9 otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with
10 precision for the unlawfully withheld wages and meal and rest period compensation owed to
11 Plaintiff and the Class, during the liability period, including because they did not implement and
12 preserve a record-keeping method as required for non-exempt employees by California Labor Code
13 §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and
14 belief, time clock punches were not maintained or were not accurately maintained for work shifts
15 and meal periods, which were automatically presumed by Defendants to have been lawfully
16 provided when they were not. Defendants also failed to accurately record and pay for all regular and
17 overtime hours worked and submitted by Plaintiff and the Class members.

18 23. Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately
19 reporting total hours worked and total wages earned by Plaintiff and the Class members, among
20 other requirements. Plaintiff and Class members are therefore entitled to penalties not to exceed
21 \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants have also failed to
22 comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time
23 records showing when the employee begins and ends each work period, meal period, and wages
24 earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage
25 statements all deductions from payment of wages and accurately reporting total hours worked.

26 24. Additionally, Defendants have consistently failed to keep accurate time and wage
27 records as required by California wage-and-hour laws. Likewise, Defendants have had a consistent
28 policy of denying Class Members the right to inspect and receive all of their payroll records,

1 timecards, and personnel records.

2 25. From at least four (4) years prior to the filing of this lawsuit and continuing to the
3 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
4 performance of their job duties for Defendants including, but not limited to, the cost of personal cell
5 phone usage, which were necessary to perform their duties under Defendants' employ in violation
6 of Labor Code § 2802.

7 26. As mentioned above, Defendants required Plaintiff and the Class members to work
8 hours off the clock for which they were not compensated and endure off the clock work during
9 interrupted or otherwise on-duty meal and rest periods. Defendants also rounded time and failed to
10 pay all wages owed for work conducted on a work shift and a workday, as addressed above.
11 Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages
12 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
13 seventy-two hours of their resignation, as required by California wage-and-hour laws.

14 27. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
15 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.4, 226.7, 245, *et*
16 *seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1197.5, 1197.1,
17 1198, 1199, 2698, 2699, *et seq.*, 2802, 2926, and 2927.

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

22 III. CLASS ALLEGATIONS

23 29. Plaintiff brings this class action on behalf of himself and all others similarly situated
24 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or "the Class" or
25 "Class members") defined as follows: "All individuals employed by Defendants at any time during
26 the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by
27 the Court ("the Class Period"), and who have been employed as non-exempt, hourly employees by
28 Defendants' within the State of California." Further, Plaintiff seeks to represent the Subclasses

composed of and defined as follows:

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

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

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

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

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

f. Subclass 6. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

g. Subclass 7. Requested Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to produce employment records upon request as required by California wage-and-hour laws.

h. Subclass 8. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees' job duties for Defendants which were necessary to perform their

1 duties under Defendants' employ.

2 j. Subclass 10. Sick Pay Subclass. All Class members who were not compensated at
3 the Employee's regular rate of pay for their sick pay wages.

4 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result
5 of Defendants' business acts and practices, to the extent such acts and practices are found to be
6 unlawful, deceptive, and/or unfair.

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

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

20 32. This action has been brought and may properly be maintained as a class action under
21 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
22 interest in this litigation and the proposed Class is easily ascertainable from the employment records
23 for Plaintiff and the Class members that Defendants are required to maintain under California law.

24 **A. Numerosity**

25 33. The potential members of the Class as defined are so numerous that joinder of all the
26 member of the class is impracticable. While the precise number of Class members has not been
27 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
28 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the Class

1 definition within the State of California. Plaintiff alleges that Defendants' employment records will
2 provide information as to the number and location of all Class members.

3 **B. Commonality**

4 34. There are questions of law and fact common to the Class that predominate over any
5 questions affecting only individual Class members. The common questions are numerous and
6 substantial and flow from Defendants' uniform policies and/or practices of violating the California
7 Labor Code addressed above. As such, these common questions predominate over individual
8 questions concerning each individual Class Member's showing as to his or her eligibility for
9 recovery or as to the amount of damages. These common questions of law and fact include:

- 10 a. Whether Defendants failed to pay Employees minimum wages;
- 11 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 12 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
13 § 510;
- 14 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
15 Wage Orders, by failing to provide Employees with requisite meal periods or
16 premium pay in lieu thereof;
- 17 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
18 Orders, by failing to authorize and permit Employees to take requisite rest breaks or
19 provide premium pay in lieu thereof;
- 20 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
21 inaccurate wage statements;
- 22 g. Whether Defendants failed to keep accurate time and wage records;
- 23 h. Whether Defendants failed to produce employment records upon request;
- 24 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
25 wages and compensation due and owing at the time of termination of employment;
- 26 j. Whether Defendants' conduct was willful;
- 27 k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
28 Orders by failing to maintain accurate records of Class members' earned wages and

work periods;

l. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;

m. Whether Defendants failed to pay Employees sick pay as required under Labor Code § 245;

n. Whether Defendants failed to reimburse Employees for necessary business expenses;

o. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;

p. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

q. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

35. The claims of the named plaintiff are typical of those of the other Employees. The Employee Class members all sustained injuries and damages arising out of and caused by Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

36. Plaintiff will fairly and adequately represent and protect the interest of the Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

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

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

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

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

27 41. Plaintiff and the Employees in the Class did not discover the fact that they were
28 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there

1 ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by
2 jury, right to collectively organize and oppose unlawful pay practices under California law as well
3 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable
4 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered their
5 claims.

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

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

11 43. Defendants failed to pay Employees minimum wages for all hours worked.
12 Defendants had a consistent policy of failing to pay Employees for all hours worked. Employees
13 would work hours and not receive all wages owed, including as alleged above in connection with
14 off the clock work, including all the time required to remain on duty and under Defendants' control
15 during breaks and due to the work demands placed upon them by Defendants' management, and
16 unlawful time rounding practices. To the extent any local wage ordinances were also applicable to
17 paying the employees an hourly rate above the minimum wage rate, Defendants failed to comply
18 with the local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices
19 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
20 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
21 of the Class as to minimum wage pay.

22 44. In California, employees must be paid at least the then applicable state minimum
23 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
24 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally, pursuant
25 to California Labor Code § 204, other applicable laws and regulations, and public policy, an
26 employer must timely pay its employees for all hours worked. Defendants failed to do so.

27 45. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
28 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to

1 employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable
2 minimum wage rate fixed by the commission for work during the relevant period is found in the
3 Wage Orders.

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

10 47. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
12 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
13 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
14 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
15 the absence of a contractually agreed upon one.

16 48. In committing these violations of the California Labor Code, Defendants
17 inaccurately recorded times that did not reflect their actual hours worked, miscalculated hours or
18 rates or otherwise underpaid the actual time worked by Plaintiff and other members of the Class,
19 including by requiring off the clock work and rounding time entries, as addressed in detail above.
20 Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other benefits
21 in violation of the California Labor Code, the Industrial Welfare Commission requirements and
22 other applicable laws and regulations. As a result of these violations, Defendants also failed to timely
23 pay all wages earned in accordance with California Labor Code § 1194.

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

28 50. In addition to restitution for all unpaid wages, pursuant to California Labor Code §

1 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial failure
2 to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
3 employee minimum wages.

4 51. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are further
5 entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest
6 thereon.

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

10 53. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
11 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
12 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's
13 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members
14 of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
15 as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the
16 California Labor Code and/or other applicable statutes. To the extent minimum wage compensation
17 is determined to be owed to the Class members who have terminated their employment, Defendants'
18 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also entitled
19 to waiting time penalties under California Labor Code § 203, which penalties are sought herein on
20 behalf of these Class members. Defendants' failure to timely pay all wages owed also violated Labor
21 Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of
22 inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not
23 in good faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory
24 costs.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE §§ 510, 512**

27 **(Against All Defendants)**

28 54. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 55. California Labor Code § 1194 provides that “any employee receiving less than the
3 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
4 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
5 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
6 may be maintained directly against the employer in an employee’s name without first filing a claim
7 with the Division of Labor Standards and Enforcement.

8 56. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
9 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
10 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
11 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
12 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one
13 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in
14 any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a
15 workweek.

16 57. Defendants had a consistent policy of not paying Employees wages for all hours
17 worked at their required regular, overtime, and double-time rates, including by requiring off the
18 clock work and rounding time entries, as addressed above, by under-reporting actual hours worked,
19 and by requiring Employees to do so as well.

20 58. Defendants, and each of them, have intentionally and improperly under-recorded
21 Employees’ hours, including Plaintiff’s, or required Plaintiff and the Class members to do so, or
22 otherwise caused them to work off the clock to avoid paying Plaintiff and the Class members all
23 earned and owed straight time and overtime wages and other benefits, in violation of the California
24 Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth
25 by the Division of Labor Standards and Enforcement. Defendants have also violated these
26 provisions by requiring Plaintiff and other similarly situated non-exempt employees to work through
27 meal periods or remain under Defendants’ control when they were required to be clocked out or to
28 otherwise work off the clock to complete their daily job duties and respond to demands from

1 customers and managers. Therefore, Employees were not properly compensated, nor were they paid
2 overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in a given
3 week. Based on information and belief, Defendants did not make available to Employees a
4 reasonable protocol for correcting time records when Employees worked overtime hours or to fix
5 incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's
6 detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly
7 situated Class members to work through meal periods when they were required to be clocked out or
8 to otherwise work off the clock to complete their daily job duties.

9 59. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
10 regular wages owed and overtime compensation for all hours worked, as required by California
11 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
12 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
13 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

14 60. Additionally, Labor Code § 558(a) provides "any employer or other person acting
15 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
17 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
18 pay period for which the employee was underpaid in addition to an amount sufficient to recover
19 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
20 employee for each pay period for which the employee was underpaid in addition to an amount
21 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
22 to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in this
23 section are in addition to any other civil or criminal penalty provided by law." Defendants have
24 violated provisions of the Labor Code regulating hours and days of work as well as the IWC Wage
25 Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor Code §
26 558.

27 61. Defendants' failure to pay compensation in a timely fashion also constituted a
28 violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly.

1 From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that
2 provision of the California Labor Code, Defendants have failed to pay all wages and overtime
3 compensation earned by Employees. Each such failure to make a timely payment of compensation
4 to Employees constitutes a separate violation of California Labor Code § 204.

5 62. Employees have been damaged by these violations of California Labor Code §§ 204
6 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under Labor
7 Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100
8 for causing Employees “to work for longer hours than those fixed, or under conditions of labor
9 prohibited by an order of the commission” or if the employer pays “a wage less than the minimum
10 fixed by an order of the commission” or “violates...any provision of this chapter or any order or
11 ruling of the commission.”

12 63. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
13 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
14 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
15 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
16 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
17 against Defendants, and each of them, and any additional sums as provided by the Labor Code
18 and/or other statutes.

19 **THIRD CAUSE OF ACTION**

20 **MEAL-PERIOD LIABILITY UNDER LABOR CODE §§ 226.7, 512**

21 **(Against All Defendants)**

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

24 65. Employees regularly worked shifts greater than five (5) hours and in some instances,
25 greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
26 Wage Order, an employer may not employ someone for a shift of more than five (5) hours without
27 providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more
28 than ten (10) hours without providing him or her with a second meal period of not less than thirty

1 (30) minutes.

2 66. Defendants failed to provide Employees with meal periods as required under the
3 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
4 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
5 provided them after Employees worked beyond the fifth hour of their shifts or Employees otherwise
6 had them shortened and interrupted by work demands and requirements to perform off the clock
7 work and remain under Defendants' control. Furthermore, upon information and belief, on the
8 occasions when Employees worked more than ten (10) hours in a given shift, they did so without
9 receiving a second uninterrupted thirty (30) minute meal period as required by law.

10 67. Defendants thus failed to provide Plaintiff and the Class members with meal periods
11 as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order, including by
12 not providing them with the opportunity to take meal breaks, by providing them late or for less than
13 thirty (30) minutes, or by requiring them to perform work during breaks.

14 68. Moreover, Defendants failed to compensate Employees for each meal period not
15 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20
16 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
17 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
18 pay at the employee's regular rate of compensation for each workday that the meal period is not
19 provided. Additionally, as detailed above, when Defendants did pay meal period premiums, they
20 did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
21 or by otherwise incorrectly calculating the regular rate.

22 69. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
23 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to
24 one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
25 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties
26 against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes
27 and applicable IWC Wage Order paragraphs.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

9 72. Employees consistently worked consecutive four (4) hour shifts and were generally
10 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit
11 them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage
12 Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each
13 consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks
14 of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were often
15 required to work or to otherwise remain under Defendants' control during rest periods, including by
16 responding to work requirements, and had breaks provided untimely as a result of the above
17 described off the clock work.

18 73. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders
19 provide that if an employer fails to provide an employee rest period in accordance with this section,
20 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided. Defendants failed to do so.

22 74. Defendants, and each of them, have therefore intentionally and improperly denied
23 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
24 paragraph 12 of the applicable IWC Wage Orders.

25 75. Defendants failed to authorize and permit Plaintiff and the Class members to take
26 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
27 with an additional hour of pay at each Employee's regular rate for each day that Defendants failed
28 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12

1 and 20 of the applicable IWC Wage Orders. Additionally, as detailed above, when Defendants did
2 pay rest period premiums, they did so at the normal regular rate of pay without factoring in all forms
3 or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

4 76. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
5 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
6 hour of wages at their effective hourly rates of pay for each day worked without the required rest
7 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
8 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

9 **FIFTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

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

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

21 79. Defendants failed to provide Plaintiff and the similarly situated Employee Class
22 members with accurate itemized wage statements in writing, as required by the Labor Code and
23 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
24 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
25 including for all overtime and double time hours worked, for deficient meal periods and rest breaks,
26 all of which Defendants knew or reasonably should have known were owed to the Employees, as
27 alleged above. Moreover, the wage statements provided to Employees by Defendants failed to
28 accurately include the total hours worked in violation of Labor Code § 226(a)(2) as it reflected

1 incorrect hours worked due to rounding, all of which Defendants knew or reasonably should have
2 known were owed to Employees, as alleged above. Thus, the wage statements provided to
3 Employees were confusing and required Employees to engage in discovery and refer to outside
4 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
5 Employees.

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

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

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

5 82. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
6 are required “to pay each employee, on the established payday for the period involved, not less than
7 the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §
8 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under
9 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may
10 therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of
11 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
12 Wage Orders.

13 83. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code §
14 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
15 Class suffered injuries, including among other things confusion over whether they received all
16 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
17 them to make mathematical computations to analyze whether the wages paid in fact compensated
18 them correctly for all hours worked.

19 84. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
20 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
21 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
22 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
23 penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to an award
24 of costs and reasonable attorneys’ fees.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO MAINTAIN RECORDS UNDER LABOR CODE §§ 1174 and 1174.5**

27 **(Against All Defendants)**

28 85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

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

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

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

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR**

14 **CODE §§ 226 and 1198**

15 **(Against All Defendants)**

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

18 90. Pursuant to California Labor Code § 226, current and former employees have the
19 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
20 request to their employer. Under this statute, an employer that receives a request to inspect or receive
21 a copy of records pertaining to a current or former employee must comply with the request as soon
22 as practicable, but no later than twenty-one calendar days from the date of the request.

23 91. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
24 or his or her representative, has the right to inspect and receive a copy of the personnel records that
25 the employer maintains relating to the employee's performance or to any grievance concerning the
26 employee. Under this statute, upon written request from a current or former employee or his or her
27 representative, an employer must make the contents of those personnel records available for
28 inspection or provide a copy of the personnel records to the current or former employee, or his or

1 her representative, not later than thirty calendar days from the date the employer receives the written
2 request, subject to some limited exceptions. Failure to comply with these requests allows for a civil
3 penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

4 92. Plaintiff sent written requests through his counsel to Defendants for his payroll
5 records, timecards, and personnel records. However, Defendant did not provide the requested
6 records within twenty-one calendar days from the date of the request.

7 93. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
8 produce the required records requested by Plaintiff.

9 94. On information and belief, Defendants' failure to provide Plaintiff with all of his
10 requested employment records is not an isolated incident, but was instead consistent with
11 Defendants' policy and practice that applied to Plaintiff and Employees.

12 95. Pursuant to California Labor Code § 1198.5, Plaintiff and Class Members are entitled
13 to a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

14 96. Pursuant to California Labor Code § 226(f), Plaintiff is entitled to a penalty of seven
15 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost, and the other Class
16 Members similarly situated are similarly entitled.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE §§ 201, 202, 203, and 204;**

19 **(Against All Defendants)**

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

22 98. Plaintiff and numerous Class members are no longer employed by Defendants; they
23 either quit Defendants' employ or were fired therefrom.

24 99. Defendants failed to pay these Employees all wages due and certain at the time of
25 termination or within seventy-two (72) hours of resignation.

26 100. The wages withheld from these Employees by Defendants remained due and owing
27 for more than thirty (30) days from the date of separation from employment.

28 101. Defendants failed to pay Plaintiff and the Class members without abatement, all

1 wages as defined by applicable California law. Among other things, these Employees were not paid
2 all regular and overtime wages, including by Defendants failing to pay for all hours worked or
3 requiring off the clock work or by unlawfully under-recording time entries to the detriment of
4 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
5 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
6 required time was willful within the meaning of Labor Code § 203.

7 102. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
8 are required "to pay each employee, on the established payday for the period involved, not less than
9 the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code §
10 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may
12 therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of
13 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
14 Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
15 are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than
16 those fixed, or under conditions of labor prohibited by an order of the commission" or if the
17 employer pays "a wage less than the minimum fixed by an order of the commission" or
18 "violates...any provision of this chapter or any order or ruling of the commission."

19 103. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
20 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of the
21 IWC Wage Orders as addressed above, including the requirement that an employee's wages shall
22 continue until paid for up to thirty (30) days from the date they were due.

23 104. Labor Code § 204 instructs that: "All wages, ...earned by any person in any
24 employment are due and payable twice during each calendar month, on days designated in advance
25 by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive,
26 of any calendar month shall be paid for between the 16th and the 26th day of the month during
27 which the labor was performed, and labor performed between the 16th and the last day, inclusive,
28 of any calendar month, shall be paid for between the 1st and 10th day of the following month."

1 Additionally, the requirements of this section shall be deemed satisfied by the payment of wages for
2 weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
3 following the close of the payroll period.” As detailed above, Defendants maintained a consistently
4 applied policy and practice of not paying all wages earned between the 1st and 15th days of a month
5 between the 16th and 26th day and failed to pay all wages earned between the 16th and the last day
6 of the month between the 1st and 10th day of the following month. Defendants similarly failed to
7 pay all wages earned by not more than seven calendar days following the close of the payroll period.

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

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

22 107. Therefore, pursuant to California Labor Code § 204, other applicable laws and
23 regulations, and public policy, Defendants unlawfully failed to timely pay all wages owed to
24 Plaintiff and Class Members. As such, Plaintiff is entitled to recover, and hereby seeks through this
25 action, civil and statutory penalties and also attorneys’ fees and costs.

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO COMPLY WITH LABOR CODE §§ 245 ET SEQ., 246, and 246.5**

3 **(Against All Defendants)**

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

6 109. California Labor Code § 245, *et seq.* requires that Defendants provide paid sick time
7 to Employees, including at the amounts, terms, and rate of compensation set forth in said law. At
8 times relevant, Defendants have failed to compute the amount due for paid sick time in conformance
9 with the pay calculation under California Labor Code § 246(1).

10 110. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
11 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
12 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Defendants
13 also failed to incorporate the prevailing wage rate into the regular rate of pay used to calculate and
14 pay sick pay. Rather than calculating the amount of paid sick time due when sick time is used
15 according to the requirement set forth in California Labor Code § 246(1), Defendants paid sick leave
16 to Employees at a lower rate, in violation of the law.

17 111. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code
18 §§ 245 *et seq.* and 246.

19 **TENTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES IN**

21 **VIOLATION FOF LABOR CODE § 2802**

22 **(Against All Defendants)**

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

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

28 114. Employees incurred necessary expenditures in the performance of their job duties for

1 Defendants, including the cost of personal cell phone usage, cost of vehicle-related expenses
2 (including without limitation, mileage, fuel, and/or wear and tear), and cost of equipment and tools,
3 which was necessary to perform their duties under Defendants' employ. From four (4) years prior
4 to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to
5 reimburse Employees for these necessarily incurred business expenses.

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

9 **ELEVENTH CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

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

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

1 should issue injunctive and equitable relief, pursuant to California Business & Professions Code §
2 17203, including restitution of wages wrongfully withheld.

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

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

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

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

22 124. By the conduct alleged herein, Defendants have engaged and continue to engage in a
23 business practice which violates California and federal law, including but not limited to, the
24 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
25 Code including Sections 204, 221, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and 1198 for
26 which this Court should issue declaratory and other equitable relief pursuant to California Business
27 & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to
28 constitute unfair competition, including restitution of wages wrongfully withheld.

125. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial.

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

TWELFTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.*

(Against All Defendants)

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

128. Plaintiff and Employees are aggrieved employees as defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the alleged violators, Defendants.

129. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections:

130. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

131. Employees also seek any and all penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
2 for each underpaid employee for each pay period for which the employee was underpaid in
3 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant
4 to this section shall be paid to the affected employee.

5 (b) If upon inspection or investigation the Labor Commissioner determines that a person
6 had paid or caused to be paid a wage for overtime work in violation of any provision of this
7 chapter, or any provision regulating hours and days of work in any order of the Industrial
8 Welfare Commission, the Labor Commissioner may issue a citation. The procedures for
9 issuing, contesting, and enforcing judgments for citations or civil penalties issued by the
10 Labor Commissioner for a violation of this chapter shall be the same as those set out in
11 Section 1197.1.

12 . . .

13 (d) The civil penalties provided for in this section are in addition to any other civil or
14 criminal penalty provided by law.

15 132. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
16 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
17 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
18 violation in a subsequent citation, for which the employer fails to provide the employee a wage
19 deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent
20 that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

21 133. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
22 LWDA and Defendants postmarked on May 17, 2024. The LWDA has not provided notice of its
23 intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

24 **IV. RELIEF REQUESTED**

25 WHEREFORE, Plaintiff prays for the following relief:

- 26 1. For an order certifying this action as a class action;
- 27 2. For compensatory damages in the amount of the unpaid minimum wages for work
28 performed by Employees and unpaid overtime compensation from at least four (4) years prior to the

1 filing of this action, as may be proven;

2 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
3 thereon, from at least four (4) years prior to the filing of this action, according to proof;

4 4. For compensatory damages in the amount of all unpaid wages, including overtime
5 and double-time pay, as may be proven;

6 5. For compensatory damages in the amount of the hourly wage made by Employees
7 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
8 years prior to the filing of this action, as may be proven;

9 6. For compensatory damages in the amount of the hourly wage made by Employees
10 for each day requisite rest breaks were not provided or were deficiently provided where no premium
11 pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

12 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

13 8. For penalties pursuant to Labor Code § 226.3, as may be proven;

14 9. For penalties pursuant to Labor Code §§ 245, *et seq.*, and 246;

15 10. For penalties pursuant to Labor Code §§ 1174.5 and 1198.5, as may be proven;

16 11. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired
17 in an amount equal to their daily wage times thirty (30) days, as may be proven;

18 12. For restitution for unfair competition pursuant to Business & Professions Code
19 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

20 13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

21 14. For compensatory damages in the amount of all previously unreimbursed business
22 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
23 from four (4) years prior to the original filing of this action, as may be proven;

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

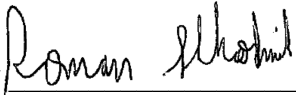
27 16. For other wages and penalties under the Labor Code as may be proven;

28 17. For all general, special, and incidental damages as may be proven;

- 1 18. For an award of pre-judgment and post-judgment interest;
2 19. For an award providing for the payment of the costs of this suit;
3 20. For an award of attorneys' fees; and
4 21. For such other and further relief as this Court may deem proper and just.

5
6 DATED: December 11, 2025

D.LAW, INC.

7
8 By 

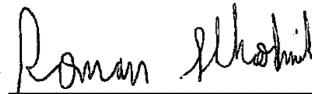
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
FRED NAZAR
and the putative class

9
10
11
12 **DEMAND FOR JURY TRIAL**

13
14 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

15
16 DATED: December 11 , 2025

D.LAW, INC.

17
18 By 

Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
FRED NAZAR
and the putative class

EXHIBIT 4