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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

DAVID MICHAEL BEASON, on behalf of himself and others similarly situated, Plaintiff, vs. GALAXY PATTERSON ROAD LLC, a California limited liability company; GALAXY THEATRES, an entity of unknown form; GALAXY RIVERBANK, an entity of unknown form; GALAXY THEATRES, LLC, a California limited liability company; GALAXY SEQUOIA LLC, a California limited liability company; GALAXY TULARE LP, a California limited partnership; GALAXY MISSION GROVE LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No. CV-24-010344 CLASS ACTION Assigned For All Purposes To: Hon. Stacy P. Speiller Dept.: 22 **DECLARATION OF ENOCH J. KIM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[filed concurrently with Plaintiff's Notice of Motion and Motion; Memorandum of Points and Authorities; Declarations of David Michael Beason and Kimberly Sutherland; and [Proposed] Order]* Date: December 10, 2026 Time: 8:30 a.m. Dept.: 22 Original Complaint Filed: December 19, 2024 First Amended Complaint Filed: February 24, 2025 Second Amended Complaint Filed: July 31, 2026 Trial Date: None Set

DECLARATION OF ENOCH J. KIM

I, Enoch J. Kim, declare as follows:

1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiff David Michael Beason ("Plaintiff"), on behalf of himself and all other similarly situated employees of Defendants Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC ("Defendants") (Plaintiff and Defendants 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 ("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.

Procedural History

3. On December 19, 2024, former plaintiff Steven Ojeda (now deceased) commenced a Class Action by filing a Complaint alleging eleven causes of action against Defendants 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) Failure to Pay Vacation Wages; (6) Failure to Comply with Labor Code §§ 245 *et seq.* and 246; (7) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (8) Violation of Labor Code § 226(a); (9) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (10) Penalties Pursuant to Labor Code § 203; and (11) Violation of Business & Professions Code § 17200 *et seq.* ("the Action").

4. Pursuant to Labor Code section 2699.3, subd.(a), former plaintiff Steven Ojeda gave timely written notice to Defendants and California's Labor and Workforce Development Agency ("LWDA") by sending his PAGA Notice on December 19, 2024 (LWDA-CM-1068528-24). A true

and correct copy of his PAGA Notice is attached hereto as **Exhibit 2**. On February 24, 2025, former plaintiff Steven Ojeda filed a First Amended Complaint adding a cause of action for Penalties Pursuant to Labor Code § 2699, *et seq*.

5. Pursuant to Labor Code section 2699.3, subd.(a), former plaintiff Steven Ojeda gave timely written notice to Defendants and the LWDA by sending his amended PAGA Notice on December 18, 2025 (LWDA-CM-1068528-24), which added Defendants Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC. A true and correct copy of his amended PAGA Notice is attached hereto as **Exhibit 3**.

6. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending his amended PAGA Notice on April 28, 2026 (LWDA-CM-1068528-24), which added Plaintiff David Michael Beason. A true and correct copy of his amended PAGA Notice is attached hereto as **Exhibit 4**.

7. On July 31, 2026, Plaintiff filed a Second Amended Complaint substituting out former plaintiff Steven Ojeda as the proposed class representative in favor of Plaintiff and adding Defendants Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC as Doe Defendants to the Action ("Operative Complaint").

8. Plaintiff contends that Defendants failed to pay all wages due by requiring Class Members to work off the clock, failed to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failed to pay vacation wages, failed to pay all sick pay owed, failed to reimburse necessary business expenditures, failed to keep required payroll records, failed to furnish accurate wage statements, and failed to timely pay wages including final wages.

Investigation

9. Before filing the lawsuit, my firm conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) meeting and conferring with defense counsel and conducting informal discovery; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's

personnel files and other documentation; (4) interviewing Plaintiff regarding Defendants' policies and workplace; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts.

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

Settlement Efforts

11. On May 28, 2025, the Parties participated in an all-day mediation with mediator Lonnie Giamela, Esq., a respected and highly experienced mediator in wage and hour class actions and were able to reach an agreement on general settlement terms. During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks of litigation and the risks to both Parties of proceeding with a class certification motion, as well as the law on unpaid wages, meal periods, rest periods, reimbursements, wage statements, and final pay. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement.

12. Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendants for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate. Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendants have asserted and/or could assert as to the substantive merit of the claims. Based on the settlement negotiations, which were extensive and

conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has determined that the Settlement is in the best interests of the Class.

Summary of the Settlement

13. Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay $500,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis. (Exhibit 1, Settlement Agreement, ¶ 1.22.) The Gross Settlement Amount will be used to pay Individual Class Payments, 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 ¶¶ 3.2–3.2.5.1.) The Gross Settlement Amount does not include the employer's share of payroll taxes, which will be paid by Defendants in addition to the Gross Settlement Amount. (*Id*. at ¶ 3.1.) Based on Defendants' estimate of the number of Workweeks during the Class Period at the time of mediation, the Parties negotiated this Agreement based on the assumption that there are 54,615 Workweeks during the Class Period. (*Id*. at ¶ 8.) If the number of total Workweeks encompassed within the Class Period exceeds 54,615 by more than 10%, Defendants may elect to either (1) purchase the additional pay periods at a pro rata rate, or (2) cut off the release period as of the date the 10% cushion is exhausted. (*Id*.)

14. The Settlement Agreement defines the "Class" as all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the Class Period, which is the period from March 1, 2022, through August 1, 2026. (Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) The Settlement Agreement also defines "PAGA Employee" as a person employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the PAGA Period, which is the period from December 20, 2024, through August 1, 2026. (*Id.* at ¶¶ 1.4, 1.32.) 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: the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id*. at ¶ 1.28.) The remainder is to be paid to Participating Class Members as

Individual Class Payments. (*Id*.) These amounts are detailed as follows:

- Class Counsel Fees Payment*:* Up to one-third (1/3) of the Gross Settlement Amount, or **$166,666.66**, 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 services as the Class Representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Administration Expenses Payment: Up to **$11,990.00** to the Administrator for its fees and costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3); and
- PAGA Penalties: **$50,000.00** for settlement of claims for civil penalties under PAGA, with 35% ($17,500.00) to be paid on a pro-rata basis to the PAGA Employees ("Individual PAGA Payments") and 65% ($32,500.00) to be paid to the LWDA ("LWDA PAGA Payment") (Exhibit 1, Settlement Agreement, ¶ 3.2.5.)

15. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $**236,343.34**. 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 Participating Class Member's Workweeks. (Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 874 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **$270.42**.

16. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) Not 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 Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("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 Defendants' records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have 60 days from the mailing of the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, and/or challenge the number of Workweeks and/or PAGA Pay Periods ("Response Deadline"). (Exhibit 1, Settlement Agreement, ¶¶ 1.44, 7.4.4.)

Certification for Settlement Purposes Only is Appropriate

17. Plaintiff alleges that the proposed Class satisfies the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendants have agreed to the conditional certification of the class for settlement purposes only. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a "lesser standard" of scrutiny applies in certifying classes for settlement purposes. *Id*. Therefore, the Court should take into consideration the fact that the Parties have settled their claims and stipulated to certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

18. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all members is impractical. Class Members are all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the Class Period, which is the period from March 1, 2022, through August 1, 2026. (Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) Defendants have identified 874 Class Members based on a review of their records. Thus, there is numerosity and ascertainability.

19. Well-Defined Community of Interest. Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*, a determination about Defendants' alleged failure to pay all wages due by requiring Class Members to work off the clock, failure to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failure to pay vacation wages, failure to pay all sick pay owed, failure to

reimburse necessary business expenses, failure to furnish accurate wage statements, and failure to timely pay wages including final wages. Plaintiff contends Defendants' practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members.

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

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

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

23. Plaintiff contends that class resolution is superior to other available methods for the 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 Defendants' policies and practices are allegedly real and significant, the cost of individually litigating each such case against Defendants 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 874 individual actions against Defendants. 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

24. 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.

25. 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, Defendants presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured that negotiations were non-

collusive and well-informed.

B. Extent of Discovery and Stage of Proceedings.

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

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

27. Plaintiff's claims are based on Defendants' alleged failure to pay wages (including minimum wages and overtime), failure to provide meal and rest periods, failure to pay final wages when required, failure to provide accurate wage statements, failure to pay vacation wages, failure to pay all sick pay owed, failure to reimburse business expenses, and largely derivative claims under the UCL and PAGA.

28. Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. Plaintiff alleges that Defendants required Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including by helping customers and co-workers, answering work-related calls and texts, and going through COVID screening and tests. However, Plaintiff alleges that Class Members were not paid for the time they worked in excess of their scheduled hours.

29. Defendants contend that they instructed Class Members to record all hours worked, that they paid Class Members for all reported hours worked, that any off-the-work was performed without Defendants' knowledge and was de minimis, and that they paid wages to Class Members at the proper rates. Defendants contend that off-the-clock work allegations will be difficult to certify because Defendants have a lawful policy prohibiting off-the-clock work. Defendants also argue that, given their written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory.

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30. Plaintiff alleges that Defendants failed to provide proper meal breaks to Class Members. Plaintiff alleges that Defendants required Class Members to work through their meal periods due to understaffing and large workload. Plaintiff further alleges that on occasions when Plaintiff and Class Members worked over ten hours on a shift, Defendants failed to provide them with a second uninterrupted, duty-free, and timely meal period.

31. Defendants contend that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary election of Class Members. Further, Defendants argue that employees signed valid meal period waivers. Defendants further contend that the meal break claim requires individualized inquiries, which would preclude class certification. If Defendants' contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

32. Plaintiff also alleges that Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. Plaintiff contends that Class Members were not permitted to leave Defendants' premises during rest periods and that rest breaks were often interrupted.

33. Defendants maintain that they 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, which were reinforced through timekeeping software to record time taken for rest breaks. Defendants contend 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.

34. Plaintiff alleges that Defendants failed to provide Class Members with sick pay and vacation pay at the appropriate rate of pay by failing to include shift differentials into the calculation of the regular rate of pay upon which sick pay and vacation pay were calculated and paid. Defendants contend that they paid any sick pay and vacation pay wages owed to Class Members at the correct rate of pay.

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35. Additionally, Plaintiff alleges that Defendants required Class Members to purchase supplies for maintenance projects and use their cellular phones for work but were not reimbursed for those expenses. Defendants maintain that Class Members did not incur business expenses and/or were properly reimbursed for all business expenses and further contend that any unreimbursed business expenses were not necessary expenditures as required by Labor Code section 2802. Defendants also maintain that individualized issues relating to this claim would preclude class certification.

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

37. Similarly, Defendants contend that the PAGA claim is also derivative of the underlying claims in the Action and ultimately fails because the underlying claims have no merit. Defendants also contend 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 Defendants acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature.

38. Defendants generally deny all claims alleged in the Action and further deny 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, Defendants have 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.

39. As stated above, while Plaintiff contends the claims asserted in the Action have merit, he also acknowledges the expense, delay, and risks of continued litigation that would have likely spanned several years at a heavy cost. 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 were to certify the class, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

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

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

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

E. The Presence of a Governmental Participant.

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

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

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

Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116.

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

Failure to Pay Minimum and Overtime Wages:

45. Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. Plaintiff alleges that Defendants required Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including by helping customers and co-workers, answering work-related calls and texts, and going through COVID screening and tests. However, Plaintiff alleges that Class Members were not paid for the time they worked in excess of their scheduled hours.

46. Defendants contend that they instructed Class Members to record all hours worked, that they paid Class Members for all reported hours worked, that any off-the-work was performed without Defendants' knowledge and was de minimis, and that they paid wages to Class Members at the proper rates. Defendants contend that off-the-clock work allegations will be difficult to certify because Defendants have a lawful policy prohibiting off-the-clock work. Defendants also argue that, given their written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory.

47. Plaintiff's expert estimated Defendants' exposure on the unpaid wages claims to be approximately $749,615.00 (assuming 11.7% of off-the-clock hours were attributable to overtime). However, given Defendants' defenses and the potential hurdles facing certification of off-the-clock claims, Class Counsel applied an 85% discount, making for an adjusted realistic exposure of

$112,442.25 for Defendants.

Meal Periods and Rest Breaks:

48. Plaintiff alleges that Defendants failed to provide proper meal breaks to Class Members. Plaintiff alleges that Defendants required Class Members to work through their meal periods due to understaffing and large workload. Plaintiff further alleges that on occasions when Plaintiff and Class Members worked over ten hours on a shift, Defendants failed to provide them with a second uninterrupted, duty-free, and timely meal period.

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

50. Defendants contend that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary election of Class Members. Further, Defendants argue that employees signed valid meal period waivers. Defendants further contend that the meal break claim requires individualized inquiries, which would preclude class certification. If Defendants' contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

51. Plaintiff's expert estimated Defendants' maximum exposure on the meal period claim at approximately $176,094.00 (based on late, missed, or short meal breaks for shifts greater than 5 hours). However, given Defendants' contentions, Class Counsel applied an 80% discount, making for an adjusted realistic exposure of $35,218.80 for Defendants.

52. Rest Breaks: The same argument applied to rest breaks. Plaintiff also alleges that Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. Plaintiff contends that Class Members were not permitted to leave Defendants'

premises during rest periods and that rest breaks were often interrupted.

53. Defendants maintain that they 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, which were reinforced through timekeeping software to record time taken for rest breaks. Defendants contend 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.

54. Plaintiff's expert estimated Defendants' maximum liability exposure on the rest break period claim at approximately $2,066,751.00 using a 100% violation rate. However, given Defendants' 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 95% discount making for an adjusted realistic exposure of $103,337.55 for Defendants. 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:

55. 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 $4,000 per employee. Plaintiff alleges Defendants issued wage statements to Plaintiff and the Class Members that failed to include the rates of pay, total hours per pay period, and failed to accurately account for all off-the-clock work and missed meal premiums which Defendants knew or reasonably should have known were owed to Plaintiff and Class Members.

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

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57. Plaintiff's expert estimated Defendants' maximum total exposure on the section 226 claim at approximately $981,300.00 (500 employees from December 19, 2023 to May 28, 2025 with a $4,000.00 per employee maximum). After considering Defendants' contentions and the potential class certification issues, Class Counsel discounted this amount by 90% to get an adjusted realistic exposure of $98,130.00.

Failure to Pay Final Wages at Termination or Separation:

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

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

60. Defendants challenged this claim under Labor Code § 203 with several arguments, including 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." Defendants argued that their good faith disputes and lack of willfulness would excuse their violations. Defendants 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).

61. Plaintiff's expert estimated Defendants' maximum total exposure on the section 203 claim at approximately $2,015,212.00 (assuming 557 terminated employees during the relevant

period and 30 days per employee and 6.5 hours per workday). Given the foregoing arguments, Class Counsel discounted this amount by 95% to get an adjusted realistic exposure of $100,760.60.

Unpaid Sick Pay and Vacation Pay:

62. 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 that Defendants failed to provide Class Members with sick pay and vacation pay at the appropriate rate of pay by failing to include shift differentials into the calculation of the regular rate of pay upon which sick pay and vacation pay were calculated and paid. Defendants contend that they paid any sick pay and vacation pay wages owed to Class Members at the correct rate of pay. Plaintiff's expert estimated Defendants' maximum total exposure on the unpaid sick pay claim at approximately $2,691.00. After considering Defendants' contentions and the potential class certification issues, Class Counsel discounted this amount by 70% to get an adjusted realistic exposure of $807.30.

Failure to Reimburse for Necessary Business Expenditures:

63. Under Labor Code § 2802(a) Defendants must indemnify Plaintiff and Class Members for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties. As discussed above, Plaintiff alleges that Defendants required Class Members to purchase supplies for maintenance projects and use their cellular phones for work but were not reimbursed for those expenses. Defendants maintain that Class Members did not incur business expenses and/or were properly reimbursed for all business expenses and further contend that any unreimbursed business expenses were not necessary expenditures as required by Labor Code section 2802. Defendants also maintain that individualized issues relating to this claim would preclude class certification.

64. Plaintiff estimated Defendants' total exposure on the unreimbursed business expenses claim at approximately $131,100.00 ($150 x 874 Class Members). However, given Defendants' contentions and the potential for the need for individualized inquiries, making class certification of this claim difficult, Class Counsel applied a discount of 80% to get an adjusted realistic exposure of $26,220.00.

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PAGA Penalties:

65. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq*., allows Plaintiff to obtain civil penalties on behalf of himself and other aggrieved employees for Defendants' violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(m), sixty-five percent (65%) of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining thirty-five percent (35%) allocated to the affected employees. The limitations period for all penalties is one year prior to the filing of the complaint.

66. The provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 227.3, 245, *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, and 2802. 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).

67. PAGA penalties are also derivative of each and every other claim, and Defendants 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, Defendants asserted that penalties under PAGA could, at best,

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

68. Plaintiff estimated Defendants' total exposure on the PAGA claim at approximately **$984,700.00** (9,847 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 90% to get an adjusted realistic exposure of $98,470.00. The PAGA allocation agreed upon by the Parties, therefore, was **$50,000.00**, subject to the Court's final approval. 65% of that amount ($32,500.00) will be paid to the LWDA out of the Gross Settlement Amount, and the remaining 35% ($17,500.00) will be distributed to the PAGA Employees.

Unfair Business Practices

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

Summary

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

71. Class Counsel applied reasonable and justified discounts, considering the facts and legal contexts outlined above. These substantial discounts were necessary in light of Defendants' contentions and denial of liability. In addition, Defendants argued that said employees were dissimilarly situated co-workers, making the certification of all Class Members less than a certainty. This Settlement, like most others, was the product of compromise. As addressed above, Plaintiff estimated that Defendants faced approximately $575,386.50 in total realistic exposure on Plaintiff's

main claims. The Gross Settlement Amount of $500,000.00, therefore, represents a recovery for the Class Members of approximately 86% of the total realistic exposure Plaintiff estimated Defendants could face on these class-wide claims. Class Counsel submits that this is an optimal result for the Class in light of all of the factors described above.

Class Counsel Fees Payment is Fair and Reasonable

72. Under the Settlement, Class Counsel requests, without opposition from Defendants, an award of $166,666.66 for attorneys' fees and up to $30,000.00 for reasonable expenses incurred to prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case. Moreover, the risk they assumed by taking it in the first place as they will not receive any compensation for their efforts until recovery is obtained for the Class. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the Settlement if it is preliminarily approved. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive.

Class Representative Service Payment is Fair and Reasonable

73. Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this action and obtaining significant benefits from the Settlement for the Class. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel.

74. Plaintiff provided Class Counsel with information about Defendants, produced and reviewed documents, identified witnesses, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. In light of the foregoing, Class Counsel believes that the $5,000.00 Class Representative Service Payment to Plaintiff is fair and reasonable.

Proposed Class Notice Provides Adequate Notice

75. The notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement

as Exhibit A. For Class Notices returned as undelivered, the Administrator will remail the Class Notice to a forwarding address (if provided) and conduct skip tracing to obtain a current address if no forwarding address is provided. (Exhibit 1, Settlement Agreement, ¶ 7.4.3.) 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 Defendants' records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have 60 days from the mailing of the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, and/or challenge the number of Workweeks and/or PAGA Pay Periods ("Response Deadline"). (Exhibit 1, Settlement Agreement, ¶¶ 1.44, 7.4.4.) This is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Class Notice.

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

Qualifications and Adequacy of Class Counsel

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

78. D.Law is well-qualified and has ample experience, knowledge, and resources to act as

counsel and represent Plaintiff and the putative Class and PAGA Employees in this Action. Our practice is exclusively focused on employment matters and representing plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

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

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

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

the plaintiff's side.

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

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

83. On November 3, 2026, Plaintiff submitted the Class Action and PAGA Settlement Agreement and Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as **Exhibit 5.**

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

Executed this 3rd day of November 2026 in Pasadena, California

Enoch J. Kim

EXHIBIT 1

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CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff David Michael Beason ("Plaintiff", in place of the recently deceased former plaintiff, Steven Ojeda) and defendants Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC (collectively, "Defendants"). The Agreement refers to Plaintiff and Defendants collectively as "Parties," or individually as "Party."

1. **DEFINITIONS.**

1.1 "Action" means Plaintiff's lawsuit alleging wage and hour violations against Defendants captioned *Steven Ojeda, et al. v. Galaxy Patterson Road LLC, et al.* initiated on December 19, 2024 and pending in Superior Court of the State of California, County of Stanislaus.

1.2 "Administrator" means Apex Class Action Administration, 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 "PAGA Employee" means a person employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the PAGA Period.

1.5 "Class" means all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants 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 Defendants' 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 PAGA Employee).

1.10 "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available

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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 with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 "Class Period" means the period from March 1, 2022, through August 1, 2026.

1.13 "Class Representative" means the named Plaintiff David Michael Beason, who is seeking Court approval to serve as a Class Representative.

1.14 "Class Representative Service Payment" means the payment to the Class Representative for prosecuting the Action and providing services in support of the Action.

1.15 "Court" means the Superior Court of California, County of Stanislaus.

1.16 "Defendants" means Defendants Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC.

1.17 "Defense Counsel" means Pettit Kohn Ingrassia Lutz & Dolin PC.

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) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

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

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

1.21 "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

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1.22 "Gross Settlement Amount" means $500,000 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 8 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.

1.23 "Individual Class Payments" 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.

1.24 "Individual PAGA Payments" means the PAGA Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.

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

1.26 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (m).

1.27 "LWDA PAGA Payment" means the 65% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (m).

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

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

1.30 "Operative Complaint" means the anticipated Second Amended Complaint that Plaintiff will file in Stanislaus County Superior Court in the *Steven Ojeda, et al. v. Galaxy Patterson Road LLC, et al.* Action, in which Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC shall be added as Doe Defendants to the Action and Plaintiff shall be substituted as the new proposed class representative.

1.31 "PAGA Pay Period" means any Pay Period during which a PAGA Employee worked for Defendants for at least one day during the PAGA Period.

1.32 "PAGA Period" means the period from December 20, 2024 through August 1, 2026.

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

1.34 “PAGA Notice” means Plaintiff’s April 28, 2026, letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount ($50,000), allocated 35% to the PAGA Employees ($17,500) and the 65% to LWDA ($32,500) in settlement of PAGA claims.

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

1.37 “Plaintiff” means David Michael Beason.

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

1.39 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

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

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

1.42 “Released Parties” means: Defendants and each of their former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.

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

1.44 "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

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

1.46 “Workweek” means any week during which a Class Member or PAGA Employee worked for Defendants for at least one day, during the Class Period.

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2. **RECITALS.**

2.1 On December 19, 2024, former plaintiff Steven Ojeda (now deceased) commenced a Class Action by filing a Complaint alleging causes of action against Defendants for (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor Code section 510; (3) meal period liability under Labor Code section 226.7; (4) rest period liability under Labor Code section 226.7; (5) failure to pay vacation wages; (6) failure to comply with Labor Code sections 245 *et seq.* and 246; (7) reimbursement of necessary expenditures under Labor Code section 2802; (8) violation of Labor Code section 226(a); (9) failure to keep required payroll records under Labor Code sections 1174 and 1174.5; (10) penalties pursuant to Labor Code section 203; and (11) violation of Business & Professions Code section 17200 *et seq.*, the California Labor Code, and the applicable IWC Wage Orders. On February 28, 2025, Steven Ojeda filed a First Amended Complaint adding a cause of action for penalties under PAGA. On March 7, 2025, Steven Ojeda filed a Notice of Errata Regarding First Amended Class Action Complaint, noting that the First Amended Complaint filed on February 28, 2025, was missing signatures at the end of the complaint and the proof of service attached to the filing was not up to date. The March 7, 2025, Notice of Errata included as Exhibit A an updated First Amended Complaint that cured these issues. The Parties agree that prior to filing the motion for preliminary approval, the Operative Complaint will name Defendants Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC as Doe Defendants to the Action. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subd.(a), Steven Ojeda gave timely written notice to Defendants and the LWDA by sending the PAGA Notices.

2.3 On April 28, 2026, Plaintiff gave timely written notice to Defendants and the LWDA by sending an amended PAGA Notice.

2.4 On July 14, 2026, the Parties filed a stipulation asking that the Court grant Plaintiff leave to file an amended complaint that would substitute out Steven Ojeda as the proposed class representative in favor of Plaintiff David Michael Beason. The July 14, 2026, stipulation was approved by the Court, and Plaintiff was granted leave to file the amended complaint. However, when Class Counsel attempted to file the amended complaint, the filing was rejected by the Court, and the Court informed Class Counsel that it would not accept the filing until the caption was changed to reflect the new parties. Therefore, on July 27, 2026, the Parties filed a revised stipulation asking that the Court grant Plaintiff leave to file an amended complaint that included an updated caption.

2.5 On May 28, 2025, the Parties participated in an all-day mediation presided over by Lonnie Giamela. Following that mediation, the Parties continued arm's length negotiations, which led to this Agreement to settle the Action.

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2.6 Prior to mediation, Plaintiff obtained, through informal discovery, a sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition. 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").

2.7 The Court has not granted class certification because the Parties engaged in mediation before any class certification.

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

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendants promise to pay $500,000 and no more as the Gross Settlement Amount and to separately pay all necessary employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have 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 PAGA Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

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 Payments to the Class Representative of not more than $5,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 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 allocate the remainder to 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 of the Gross Settlement Amount, which is currently estimated to be $166,666.66 and

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a Class Counsel Litigation Expenses Payment for reimbursement of actual costs incurred in the Action, which is currently estimated not to exceed $30,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 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 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 Defendants harmless, and indemnifies Defendants, 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 $11,990.00 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 $$11,990.00, the Administrator will allocate the remainder to 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. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% 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.

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3.2.5 To the LWDA and PAGA Employees: PAGA Penalties in the amount of $50,000 to be paid from the Gross Settlement Amount, with 65% ($32,500) allocated to the LWDA PAGA Payment and 35% ($17,500) 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 PAGA Employees' 35% share of PAGA Penalties ($50,000) by the total number of PAGA Period Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's PAGA Period Pay Periods. PAGA 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. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and PAGA Employee Pay Periods. Based on a review of its records, Defendants estimate there are 874 Class Members who collectively worked a total of 55,488 workweeks from March 1, 2022, to August 1, 2026, and 434 PAGA Employees who worked a total of 9,847 PAGA Pay Periods from December 20, 2024, to August 1, 2026.

4.2 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants 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. Defendants have 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 Defendants 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. Defendants shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

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4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund 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 PAGA Employees including Non-Participating Class Members who qualify as PAGA 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 Settlement 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 other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the 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, 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 Defendants 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 Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of

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the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff, on behalf of himself and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, releases and discharges Released Parties from any and all claims, damages, debts, liabilities, demands, obligations, penalties, actions or causes of action of any kind, arising under state, federal or local law, whether statutory, common law, or administrative law, at any time during the Class Period, that were alleged in the Operative Complaint, or reasonably could have been alleged based on the facts stated in the Operative Complaint and/or Plaintiff's administrative exhaustion letters submitted to the California Labor & Workforce Development Agency ("LWDA") in connection with the Action, including but not limited to claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to pay vacation time and wages, failure to pay paid sick time and wages, failure to reimburse expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, and for unfair competition predicated on the aforementioned Labor Code violations (collectively, the "Released Claims") ("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, release Released Parties from any and all claims, damages, debts, liabilities, demands, obligations, penalties, actions or causes of action of any kind, arising under state, federal or local law, whether statutory, common law, or administrative law, at any time during the Class Period, that were alleged in the Operative Complaint, or reasonably could have been alleged based on the facts stated in the Operative Complaint and/or Plaintiff's administrative exhaustion letters submitted to the California Labor & Workforce Development Agency ("LWDA") in connection with

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the Action, including but not limited to claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to pay vacation time and wages, failure to pay paid sick time and wages, failure to reimburse expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, and for unfair competition predicated on the aforementioned Labor Code violations (collectively, the "Released Claims"). This release shall apply to claims arising during the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by PAGA Employees: All PAGA Employees are deemed to release the Released Parties from any and all claims for PAGA civil penalties, interest, fees or costs alleged in and/or reasonably arising out of the facts alleged in the Operative Complaint, and/or Plaintiff's administrative exhaustion letter submitted to the LWDA arising during the PAGA Period (collectively, the "Released PAGA Claims").

6. **MOTION FOR PRELIMINARY APPROVAL**. Class Counsel will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (ii) 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; (iii) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. Defendant and Defense Counsel will reasonably cooperate with Plaintiff in the preparation and filing of all documents required for Preliminary Approval, including a declaration attesting to any facts relevant to any actual or potential conflicts of interest with the Administrator.

6.2 Responsibilities of Class Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in

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favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order 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, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action Administration to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for 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, PAGA Members, Workweeks, and 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 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

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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 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, Defendants, 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, by email, or by telephone, and make a good faith 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 mail the Administrator 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 or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be 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

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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 5.2 and 5.3 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 and Participating Class Members who are PAGA 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 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 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 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 Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination 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

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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 of the class action components of the Settlement.

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

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, 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 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

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

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay

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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 Plaintiff is 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 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 Defendants' estimate of the number of workweeks during the Class Period at the time of mediation, the Parties negotiated this Agreement based on the assumption that there are 54,615 workweeks during the Class Period. If the number of Total Workweeks encompassed within the Class period exceeds 54,615 by more than 10%, Defendants may elect to either (1) purchase the additional pay periods at a pro rata rate, or (2) cut off the release period as of the date the 10% cushion is exhausted. If this provision is triggered and Defendants elect to purchase the additional pay periods at a pro rata rate, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision is implemented.

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

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10. **MOTION FOR FINAL APPROVAL.** 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"). Class Counsel is responsible for preparing and filing the Motion for Final Approval; obtaining a prompt hearing date for the Motion for Final Approval; and for appearing in Court to advocate in favor of the Motion for Final Approval. Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person, email, or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or 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 the Court shall retain continuing jurisdiction over the Action under CCP section 664.6 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.

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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 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' 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 not grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve 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 Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants 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

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Counsel, Defendants 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 Defendants, 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, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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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 all Parties or their representatives, 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 Defendants 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 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make 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:

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To Plaintiffs:

D.Law, Inc.
Roman Shkodnik
r.shkodnik@d.law
Mason Doidge
m.doidge@d.law
250 N Madison Avenue, 2nd Floor
Pasadena, CA 91101-1639
(818) 962-6465

To Defendant:

Thomas S. Ingrassia, Esq., SBN 149673
Haley A. Murphy Esq., SBN 343909
PETTIT KOHN INGRASSIA LUTZ & DOLIN PC
11622 El Camino Real, Suite 300 San Diego, CA 92130
Telephone: (858) 755-8500
Facsimile: (858) 755-8504
tingrassia@pettitkohn.com
hmurphy@pettitkohn.com

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.

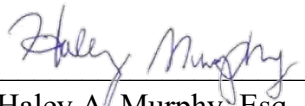
Signed by:
David Michael Beason
2E9DD8739DA044B...
For Plaintiff. Date: 7/30/2026

Rafe Cohen
Rafe Cohen
For Defendants. Date: 08/19/2026

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Counsel For Plaintiff. Date: 07/30/2026



Counsel For Defendants. Date: July 30, 2026

Haley A. Murphy, Esq.

EXHIBIT A

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

Steven Ojeda, et al. v. Galaxy Patterson Road LLC, et al.

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 Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC ("Galaxy") for alleged wage and hour violations. The Action is prosecuted by former Galaxy employee David Michael Beason ("Plaintiff") and seeks payment of (1) back wages and other relief for a class of hourly non-exempt employees ("Class Members") who worked for Galaxy during the Class Period (March 1, 2022, through August 1, 2026); and (2) penalties under the California Private Attorney General Act ("PAGA") for all hourly non-exempt employees who worked for Galaxy during the PAGA Period (December 20, 2024 through August 1, 2026) ("PAGA Employees").

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

Based on Galaxy'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 Galaxy'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 Galaxy'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 during the Class Period or more pay periods during the PAGA 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 do 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 Galaxy to make payments under the Settlement and requires Class Members and PAGA Employees to give up their rights to assert certain claims against Galaxy.

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If you worked for Galaxy 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 Class Period wage claims and PAGA Period penalty claims against Galaxy.

(2) **Opt-Out of the Class Settlement**. You can exclude yourself from the Class Settlement (opt-out) by submitting a 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 Galaxy, and, if you are an PAGA Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Galaxy 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 Galaxy that are covered by this Settlement (defined below).
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is _____**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Galaxy must pay Individual PAGA Payments to all PAGA Employees and the PAGA Employees must give up their rights to pursue the PAGA claims covered by this Settlement (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	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

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Written Objections Must be Submitted by _____	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/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 Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Galaxy'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 Galaxy employee. The Action alleges Galaxy violated California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. 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.")

Galaxy strongly denies violating any laws or failing to pay any wages and vehemently 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 Galaxy or Plaintiff are correct on the merits.

In the meantime, Plaintiff and Galaxy hired an experienced mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Galaxy 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, Galaxy 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) Galaxy has

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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 PAGA 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. Galaxy Will Pay $500,000.00 as the Gross Settlement Amount (Gross Settlement). Galaxy has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount 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, Galaxy will fund the Gross Settlement Amount not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

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

    a. Up to $166,666.66 (one-third of the Gross Settlement Amount to Class Counsel for attorneys' fees) and reimbursement of their litigation expenses, which is currently estimated not to exceed $30,000. To date, Class Counsel has worked and incurred expenses on the Action without payment.

    b. Up to $5,000 to Plaintiff as a Class Representative Service Payment for prosecuting 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 $11,990 to the Administrator for services administering the Settlement.

    d. Up to $50,000 for PAGA Penalties, allocated 65% ($32,500.00) to the LWDA PAGA Payment and 35% ($17,500.00) in Individual PAGA Payments to the PAGA 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.

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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 Amount (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 Galaxy are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Galaxy 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 Galaxy 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 or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Galaxy.

   You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right

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to assert PAGA claims against Galaxy based on the PAGA Period facts alleged in the Action.

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 Galaxy have agreed that, in either case, the Settlement will be void: Galaxy will not pay any money and Class Members will not release any claims against Galaxy.

8. Administrator. The Court has appointed a neutral company, Apex Class Action Administration (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks and/or 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 Galaxy has fully funded the Gross Settlement Amount 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 Galaxy or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

   > All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, damages, debts, liabilities, demands, obligations, penalties, actions or causes of action of any kind, arising under state, federal or local law, whether statutory, common law, or administrative law, at any time during the Class Period, that were alleged in the Operative Complaint, or reasonably could have been alleged based on the facts stated in the Operative Complaint and/or Plaintiff's PAGA Notices submitted to the California Labor & Workforce Development Agency ("LWDA") in connection with the Action, including claims for failure to pay minimum wages, wages, and overtime, meal period violations, rest period violations, failure to pay vacation time and wages, failure to pay paid sick time and wages; failure to reimburse expenses, failure to issue accurate and itemized wage statements, failure to keep payroll records, failure to pay final wages and waiting time penalties, and for unfair competition predicate on the aforementioned Labor Code violations (collectively, the "Released Class Claims"). This release shall apply to claims arising during the Class Period. Except as set forth in Section 5.3 of the

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

10. PAGA Employees' PAGA Release. After the Court's judgment is final, and Galaxy has paid the Gross Settlement Amount (and separately paid the employer-side payroll taxes), all PAGA Employees will be barred from asserting PAGA claims against Galaxy, whether or not they exclude themselves from the Settlement. This means that all PAGA 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 Galaxy or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

    All Participating are deemed to release the Released Parties from any and all claims for PAGA civil penalties, interest, fees or costs alleged in and/or reasonably arising out of the facts alleged in the Operative Complaint, and/or Plaintiff's PAGA Notices submitted to the LWDA arising during the PAGA Period (collectively, the "Released PAGA Claims").

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 $17,500 by the total number of PAGA Pay Periods worked by all PAGA Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Employee.

3. Workweek/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 Galaxy'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 by mail or email. Section 9 of this Notice has the Administrator's contact information.

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You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Galaxy's calculation of Workweeks and/or Pay Periods based on Galaxy'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 Galaxy'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 PAGA Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment (if any).

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA 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 *Steven Ojeda v. Galaxy Patterson Road LLC, et al.*, and include your identifying information (full name, address, telephone number, or email address). **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 Galaxy are asking the Court to approve. At least _____ 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 a Class Representative 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

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documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

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 Class Representative Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Steven Ojeda, et al. v. Galaxy Patterson Road LLC, et al.* and include your name, current address, telephone number, and approximate dates of employment for Galaxy 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 22 of the Stanislaus County Superior Court, located at 801 10th Street Modesto, CA 95354. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via Zoom. 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 Galaxy 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.

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

Class Counsel:

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D.Law, Inc.
Roman Shkodnik
r.shkodnik@d.law
Mason Doidge
m.doidge@d.law
250 N Madison Avenue, 2nd Floor
Pasadena, CA 91101-1639
(818) 962-6465

Settlement Administrator:
Name of Company: Apex Class Action Administration
Email Address: Sean@apexclassaction.com
Mailing Address: 18 Technology Drive, Suite 154, Irvine, CA 92618
Telephone: 949.878.3676

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

D.Law

450 N. Brand Blvd, Suite 840
Glendale, CA 91203

(818) 962-6465
(818) 962-6469

VIA ON-LINE SUBMISSION ONLY TO:
https://dir.tfaforms.net/128 **(copy by certified mail to all Defendants)**

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

Capitol Corporate Services, Inc., Agent for Service
Galaxy Patterson Road LLC
455 Capitol Mall Complex Suite, 217
Sacramento, CA 95814
Certified Mail Tracking Number: 9414 8112 0620 6803 2571 22

Galaxy Patterson Road LLC
15060 Ventura Blvd., Suite 350
Sherman Oaks, CA 91403
Certified Mail Tracking Number: 9414 8112 0620 6803 2567 36

Galaxy Theatres
2525 Patterson Road
Riverbank, CA 95367
Certified Mail Tracking Number: 9414 8112 0620 6803 2518 92

Galaxy Riverbank
2525 Patterson Road
Riverbank, CA 95367
Certified Mail Tracking Number: 9414 8112 0620 6803 2511 13

Re: Labor Code § 2698, *et seq*. Penalties – PAGA Notice Letter to the LWDA
Ojeda v. Galaxy Patterson Road LLC, et al.

Gentlepersons:

This office represents Plaintiff Steven Ojeda ("Plaintiff") and other similarly situated aggrieved non-exempt employees (collectively "Aggrieved Employees") for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq*.

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* ("the Act"). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Galaxy Patterson Road

LLC; Galaxy Theatres; Galaxy Riverbank; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as "Defendants").

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

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

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were not paid for the time that they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also used a time-keeping system that allowed Aggrieved Employees to keep track of the hours they worked. However, instead of having Aggrieved Employees record the times they actually started and stopped working, Defendants had a uniform policy and practice of rounding all time entries to reflect scheduled start and end times rather than paying Aggrieved Employees for all hours and minutes they actually worked. This practice of rounding all time entries was generally done 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.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved

Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, 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 and vacation pay were calculated and paid.

Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiff and Aggrieved Employees for

expenses necessarily incurred in the performance of their job duties for Defendants, including but not limited to personal cell phone usage, personal tools, such as power sanders, which Defendants required Employees to bring to work and use for work purposes, and mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked due to rounding as discussed above.

Moreover, Defendants failed to pay Plaintiff and 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 attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

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

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to

the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

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

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

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks, rounding of timekeeping entries, and working "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Aggrieved Employees were not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and 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). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by

the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

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

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

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time discussed above—including the time they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, helping coworkers with work tasks, and being required to respond to work-related phone calls and texts received while off-the-clock, as well as time spent working while clocked out for meal breaks—caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay

for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. This unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

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

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants

failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations or failed to provide rest breaks altogether. What rest breaks were provided were not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

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

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

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 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 Comply with Labor Code §§ 245 *et seq.* and 246

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 compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid nondiscretionary commissions, incentive pay, shift differentials, 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, 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 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 but not limited to personal cell phone usage, the cost of personal tools, such as power sanders, which Defendants required Employees to bring to work and use for work purposes, and the cost of mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their 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 Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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, the wage statements given to Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and reflected incorrect hours worked due to the rounding of timekeeping entries. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). 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 Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

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

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate

itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Failure to Keep Records In Accordance With Labor Code § 1174

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

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

Waiting Time Penalties Pursuant to Labor Code § 203

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

recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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

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

Plaintiff's PAGA Claim under Labor Code § 2698 *et seq*. and Recovery Bases:
After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the attached Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 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 Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under

paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

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

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

(f) 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.* and 246 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) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 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); and

(h) 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 Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, , and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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

Regards,

D LAW, INC.

David Yeremian

Cc: Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, by Certified Mail

EXHIBIT 3

D.Law

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VIA ON-LINE SUBMISSION ONLY TO:
https://dir.tfaforms.net/128 **(copy by certified mail to all Defendants)**

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LWDA No.
Re: Labor Code § 2698, *et seq*. Penalties – PAGA Notice Letter to the LWDA
Ojeda v. Galaxy Patterson Road LLC, et al.

Gentlepersons:

This office represents Plaintiff Steven Ojeda ("Plaintiff") and other similarly situated aggrieved non-exempt employees (collectively "Aggrieved Employees") for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and

2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq*.

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* ("the Act"). Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Galaxy Patterson Road LLC; Galaxy Theatres; Galaxy Riverbank; Galaxy Theatres, LLC; Galaxy Sequoia LLC; Galaxy Tulare LP; Galaxy Mission Grove LLC; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as "Defendants").

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

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

Relevant Facts

Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Aggrieved Employees were not paid for the time that they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Thus, Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also used a time-keeping system that allowed Aggrieved Employees to keep track of the hours they worked. However, instead of having Aggrieved Employees record the times they actually started and stopped working, Defendants had a uniform policy and practice of rounding all time entries to reflect scheduled start and end times rather than paying Aggrieved Employees for all hours and minutes they actually worked. This practice of rounding all time entries was generally done 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.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiff and Aggrieved Employees proper overtime wages. Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, 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 and vacation pay were calculated and paid.

Defendants had a common policy and/or practice of denying Plaintiff and Aggrieved Employees proper meal periods. Specifically, Plaintiff and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Plaintiff and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiff and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Plaintiff and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiff and Aggrieved Employees were required to work

through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiff and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants, including but not limited to personal cell phone usage, personal tools, such as power sanders, which Defendants required Employees to bring to work and use for work purposes, and mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Aggrieved Employees. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Aggrieved Employees were confusing and required Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Aggrieved Employees. Moreover, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked due to rounding as discussed above.

Moreover, Defendants failed to pay Plaintiff and 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 attached Class Action Complaint, Plaintiff and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages
Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"

states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

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

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

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

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks, rounding of timekeeping entries, and working "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Aggrieved Employees were not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Thus, Plaintiff and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiff and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have

willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiff and 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). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.

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

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

Defendants violated the law by failing to pay Plaintiff and Aggrieved Employees earned wages and overtime. Specifically, Plaintiff and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiff and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time discussed above—including the time they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, helping coworkers with work tasks, and being required to respond to work-related phone calls and texts received while off-the-clock, as well as time spent working while clocked out for meal breaks—caused Plaintiff and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiff and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders. Additionally, Defendants did not pay Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Aggrieved

Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided

with meal periods late and well after the fifth hour of work, could not be relieved to take their meal periods, or were required to remain on-duty at all times and were unable to take off-duty meal periods or were otherwise not provided with the opportunity to take required meal periods.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations or failed to provide rest breaks altogether. What rest breaks were provided were not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest

period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

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

Failure to Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiff accordingly seeks this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 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 Comply with Labor Code §§ 245 *et seq.* and 246

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 compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l). Defendants paid nondiscretionary commissions, incentive pay, shift differentials, 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, 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 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 but not limited to personal cell phone usage, the cost of personal tools, such as power sanders, which Defendants required Employees to bring to work and use for work purposes, and the cost of mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their 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 Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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, the wage statements given to Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and reflected incorrect hours worked due to the rounding of timekeeping entries. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned. Additionally, the wage statements given to Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay

period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). 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 Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

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

statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Failure to Keep Records In Accordance With Labor Code § 1174

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

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage

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

Waiting Time Penalties Pursuant to Labor Code § 203

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

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

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

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

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

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

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 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 Plaintiff and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

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

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

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

(f) 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.* and 246 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) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 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); and

(h) 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 Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Theatres, LLC, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and any other named Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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

Regards,

D.LAW, INC.



Mason Doidge

Cc: Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Theatres, LLC, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC by Certified Mail

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Attorneys for Plaintiff STEVEN OJEDA,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

STEVEN OJEDA, on behalf of himself and others similarly situated,

Plaintiff,

vs.

GALAXY PATTERSON ROAD LLC, a California limited liability company; GALAXY THEATRES, an entity of unknown form; GALAXY RIVERBANK, an entity of unknown form; and DOES 1 through 50, inclusive,

Defendants.

Case No. CV-24-010344

CLASS ACTION

Assigned for All Purposes To:
Hon. Stacy P. Speiller
Dept.: 22

FIRST AMENDED 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. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et seq*. and 246;
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Business & Professions Code § 17200 *et seq*.; and
12. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

Plaintiff STEVEN OJEDA, (hereinafter "Plaintiff") on behalf of himself and all others similarly situated (collectively, "Employees"; individually, "Employee") complains of Defendants, and each of them, as follows:

INTRODUCTION

1. Plaintiff brings this action on behalf of himself and all current and former Employees within the State of California who, at any time four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt, hourly employees by Defendants GALAXY PATTERSON ROAD LLC, a California limited liability company; GALAXY THEATRES, an entity of unknown form; GALAXY RIVERBANK, an entity of unknown form; and DOES 1 through 50 (all defendants being collectively referred to herein as "Defendants"). Plaintiff alleges that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

2. Plaintiff is a resident of California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California. Plaintiff and the other Class members worked for Defendants in Stanislaus County, and in other nonexempt positions, throughout California and, and consistently worked at Defendants' behest without being paid all wages due. More specifically, Plaintiff and the other similarly situated Class members were employed by Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

3. Defendants required Plaintiff and the Employees in the Class to perform work while remaining under Defendants' control before and after being on the clock for their daily work shift. Defendants further failed to accurately record time worked by Plaintiff and Employee Class members by rounding hours worked to reflect scheduled shift start and end times as opposed to

actual hours worked. Defendants thus failed to pay Plaintiff and the Class members for all hours worked and provided them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as employees were not provided with the opportunity to take timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

THE PARTIES

A. The Plaintiff

4. Plaintiff STEVEN OJEDA has resided in California and during the time period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant GALAXY PATTERSON ROAD LLC is a California limited liability company with its principle executive offices in Riverbank, California and has been listed as the employer on Plaintiff's paystubs and wage statements during the relevant time period. GALAXY PATTERSON ROAD LLC lists a mailing address in Sherman Oaks, California, with the California Secretary of State and employs Plaintiff and the Class members at Defendants' offices and facilities in Riverbank, California, and throughout California and conducts business throughout California.

6. Defendant GALAXY THEATRES is an entity of unknown form and has been listed as the employer on Plaintiff's personnel file during the relevant time period. GALAXY THEATRES does not list a mailing address with the California Secretary of State, but upon information and belief, employs Plaintiff and the Class members at Defendants' offices and facilities in Riverbank, California, and throughout California and conducts business throughout California.

7. Defendant GALAXY RIVERBANK is an entity of unknown form and has been listed as the employer on Plaintiff's personnel file during the relevant time period. GALAXY RIVERBANK does not list a mailing address with the California Secretary of State, but upon information and belief, employs Plaintiff and the Class members at Defendants' offices and

facilities in Riverbank, California, and throughout California and conducts business throughout California.

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

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

JURISDICTION AND VENUE

10. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq*. Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Stanislaus County, Defendants maintain and operate company offices and facilities in Stanislaus County, and Defendants employ Plaintiff and other Class members in Stanislaus County and throughout

California.

FACTUAL BACKGROUND

11. The Employees who comprise the Class and Collective, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically, Plaintiff and Employees were not paid for the time that they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Defendants also had a uniform policy and practice of rounding all time entries to reflect scheduled shift start and end times rather than paying Plaintiff and the Class members for all hours and minutes they actually worked. Defendants generally rounded time entries to the detriment of the Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

12. During the course of Plaintiff and the Class members' employment with Defendants, they were not paid all wages they were owed, including for all work performed and for all overtime hours worked and were forced to work during their meal and rest breaks. Defendants also failed to maintain timekeeping records for Plaintiff that would permit him to discover the nature and extent of Defendants' unlawful rounding. Additionally, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for

purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

13. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating sick pay. Therefore, during times when Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all sick pay by paying a lower overtime rate than required.

14. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating vacation pay. Therefore, during times when Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

15. As a matter of uniform Company policy, Plaintiff and the Class members were required to work during their meal and rest breaks which were not compensated by Defendants in violation of the California Labor Code. Plaintiff and the Class members were also not paid regular wages and overtime for the time they were required to comply with other requirements imposed upon them, which they had to complete while working through their meal and rest breaks and without compensation. As a result, Plaintiff and the Class members worked shifts over

eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime rate for all such hours, including by being required to perform work duties and tasks without pay and while off-the-clock, and due to Defendants' unlawful rounding. As a result, Plaintiff and the Class members worked substantial overtime hours during their employment with Defendants for which they were not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

16. As a result of the above described unlawful rounding, the daily work demands and pressures to work through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the Class members were not properly paid for all wages earned and for all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for which they were not adequately and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

17. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked and failing to pay minimum wage for all time worked as required by California Law.

18. Additionally from at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees overtime compensation at premium overtime rates for all hours worked in excess of eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding sections of IWC Wage Orders.

19. Additionally, from at least four (4) years prior to the filing of this lawsuit and

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

20. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have consistently failed to provide Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did Defendants pay Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided at one hour of wages at each Employee's effective regular rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to provide Employees with timely, accurate, and itemized wage statements as required by California wage-and-hour laws. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Employees.

22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to provide Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

23. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, but not limited to, the cost of personal cellphone usage, the cost of personal tools, such as power sanders, which Defendants required

Employees to bring to work and use for work purposes, and the cost of mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ in violation of Labor Code § 2802.

24. Additionally, from at least three (3) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

25. Additionally, from at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

26. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq*, and 2802.

27. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

28. 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 defined as follows: all individuals employed by Defendants within the State of California at any time within four (4) years of the filing of this lawsuit.

29. Further, Plaintiff seeks to represent the following 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. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their sick pay wages.

g. Subclass 7. Failure to Reimburse for Necessary Business Expenditures Subclass. All Class members who were subject to Defendants' failure to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants.

h. Subclass 8. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

i. Subclass 9. 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.

j. Subclass 10. 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.

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

30. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or

limitation to particular issues.

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

A. Numerosity

32. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the time period relevant to this lawsuit, employed more than 100 individuals within the State of California.

33. Accounting for employee turnover during the relevant time period increases this number substantially. Plaintiff alleges that Defendants' employment records will provide information as to the number and location of all class members.

B. Commonality

34. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. These common questions of law and fact include:

a. Whether Defendants failed to pay Employees minimum wages;

b. Whether Defendants failed to pay Employees wages for all hours worked;

c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;

d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;

e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;

f. Whether Defendants failed to pay Employees vacation wages as required under

Labor Code § 227.3;

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

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

i. Whether Defendants violated Labor Code § 226(a);

j. Whether Defendants violated Labor Code §§ 1174 and 1174.5;

k. 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;

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

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

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

D. Adequacy of Representation

36. Plaintiff will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees 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 has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

38. Class action treatment will allow those persons similarly situated to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

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

40. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks, rounding of timekeeping entries, and working "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Plaintiff and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Defendants have also intentionally and improperly rounded, changed, adjusted, and/or modified Employee hours, while benefiting Defendants. Defendants thus regularly failed to pay minimum wages to Plaintiff and Class members, including by unlawful rounding to their detriment. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

> The minimum wage for employees fixed by the commission is the

> minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

42. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

43. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California 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.

44. 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.

45. California Labor Code § 1194.2 also provides for the following remedies:

> In any action under Section 1194 . . . to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

47. Wherefore, 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).

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

49. By their conduct, as set forth herein, Defendants violated California Labor Code § 510 (and 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 (8) hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) 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 (12) hours in any one (1) day or for hours worked in excess of eight (8) 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 time off the clock working "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Plaintiff and Class members were also not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Employees regularly worked over 8 hours on a given day or over 40 hours in a given week without receiving overtime compensation.

50. Furthermore, on information and belief, Defendants did not pay Plaintiff and Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.

51. Therefore, during times when Plaintiff and Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

52. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of compensation to Employees constitutes a separate violation of California Labor Code § 204.

53. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

54. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), 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.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

56. Employees regularly worked shifts greater than five (5) hours and greater than ten (10) hours. Pursuant to Labor Code § 512 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.

57. Defendants failed to provide Employees with meal periods as required under the Labor Code. Employees were consistently required to work through their meal periods which they were consistently denied. Employees were also required to take meal periods after working well beyond the five (5) hour shifts. What meal periods were provided were also not duty-free due to Defendants' policy and practice of interrupting the meal breaks with work demands. Furthermore, Employees were regularly required to work for more than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal period as required by law.

58. 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 hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. Defendants failed to compensate the Employees in the Class 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 Order. 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.

59. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, a sum to be proven at trial.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

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

61. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift.

62. Defendants failed to provide Employees with timely rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. What rest breaks were provided were also not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands.

63. Moreover, Defendants failed to compensate Employees for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

Defendants failed to compensate the Employees in the Class for each rest period not provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did pay rest 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.

64. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES

(Against All Defendants)

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

66. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served.

67. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

68. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code § 227.3.

SIXTH CAUSE OF ACTION

FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246

(Against All Defendants)

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

70. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time

to Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(l).

71. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon 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 Employees at a lower rate, in violation of the law.

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

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES IN VIOLATION OF LABOR CODE § 2802

(Against All Defendants)

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

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

75. Employees incurred necessary expenditures in the performance of their job duties for Defendants, including but not limited to the cost of cell phone usage, the cost of personal tools, such as power sanders, which Defendants required Employees to bring to work and use for work purposes, and the cost of mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

76. As a result of the unlawful acts of Defendants, Employees have been deprived of

reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

(Against All Defendants)

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

78. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; 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.

79. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by Defendants, failed to accurately account for wages, overtime, and premium pay for deficient meal periods and rest breaks, and reflected incorrect hours worked due to the rounding of timekeeping entries all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the total amount of compensation of their Employees. Additionally, the wage statements given to Employees, by Defendants, failed to include the requirements enumerated above. Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9). The wage statements provided to Employees were confusing and required

Employees to engage in discovery and refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Employees.

80. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), 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.

81. Pursuant to Labor Code §§ 226(a) and 226(e), 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.

82. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a civil penalty of two hundred and fifty dollars ($250) for initial violations for each employee for each pay period, and one thousand dollars ($1000) for each subsequent violation for each employee for each pay period.

83. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and any other applicable statute allowing recovery of penalties as alleged herein in an amount to be shown according to proof.

NINTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174 AND 1174.5

(Against All Defendants)

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

85. 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.

86. 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.

87. 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.

/ / /

TENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 203

(Against All Defendants)

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

89. Numerous Employees are no longer employed by Defendants; they either quit Defendants' employ or were fired therefrom.

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

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

92. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties 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.

ELEVENTH CAUSE OF ACTION

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

(Against All Defendants)

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

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

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

96. Business & Professions Code § 17200 *et seq*. prohibits unlawful and unfair business practices.

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

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

99. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of the Business & Professions Code § 17200 *et seq*.

100. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the

Business & Professions Code § 17200 *et seq*.

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

102. 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)

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

104. 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.

105. 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: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq*, and 2802.

106. The penalties shall be allocated as follows: 65% to the Labor and Workforce Development Agency (LWDA) and 35% to the affected employee.

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

108. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of

Section 226 shall be subject to a civil 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, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

109. Plaintiff has exhausted her administrative remedy by sending a certified letter to the LWDA and Defendants postmarked December 19, 2024. The LWDA has not provided notice of its intent to investigate the alleged violations withing 65 calendar days of the postmark date of the letters.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;

2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;

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

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

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

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

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

8. For penalties pursuant to Labor Code § 227.3, as may be proven;

9. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

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

11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

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

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

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

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

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

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

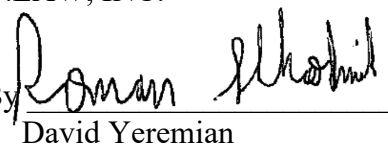
18. For an award providing for the payment of the costs of this suit;

19. For an award of attorneys' fees; and

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

DATED: February 24, 2025

D.LAW, INC.

By 

David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
STEVEN OJEDA
and the putative class

DEMAND FOR JURY TRIAL

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

DATED: February 24, 2025

D.LAW, INC.

By _____

David Yeremian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
STEVEN OJEDA
and the putative class

EXHIBIT 4

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VIA ON-LINE SUBMISSION ONLY TO:
https://dir.tfaforms.net/128 **(copy by certified mail to all Defendants)**

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LWDA No. 1068528-24
Re: Labor Code § 2698, *et seq*. Penalties – Second Amended PAGA Notice Letter to the LWDA -- *Ojeda v. Galaxy Patterson Road LLC, et al.*

Gentlepersons:

This office represents Plaintiffs Steven Ojeda and David Michael Beason ("Plaintiffs") and other similarly situated aggrieved non-exempt employees (collectively "Aggrieved Employees") for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq*.

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* ("the Act") and to supplement and amend Plaintiff Steven Ojeda's original PAGA Notice to the LWDA, submitted on December 19, 2024 (LWDA Case No. LWDA-CM-1068528-24). Plaintiff Ojeda concurrently filed a class action complaint in Stanislaus County Superior Court alleging various wage and hour violations committed by Galaxy Patterson Road LLC; Galaxy Theatres; Galaxy Riverbank; Galaxy Theatres, LLC; Galaxy Sequoia LLC; Galaxy Tulare LP; Galaxy Mission Grove LLC; and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as "Defendants"). The Complaint allegations and claims are incorporated into this Notice Letter. Plaintiff Ojeda would now like to add Plaintiff David Michael Beason to his original PAGA Notice so they may continue to pursue the representative action, on behalf of themselves and all other similarly situated Aggrieved Employees, and the State of California, against Defendants.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiffs and all of their Aggrieved Employees in California. This Amended Notice Letter, addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiffs and Aggrieved Employees were employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked.

Additionally, Plaintiffs and Aggrieved Employees were not paid for the time that they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Defendants required Employees to use their personal cell phones to respond to work demands outside of scheduled work hours, and Employees were not compensated for this time. Thus, Plaintiffs and Aggrieved Employees were required to work hours, under the control of Defendants, without wages.

Defendants also used a time-keeping system that allowed Plaintiffs and Aggrieved Employees to keep track of the hours they worked. However, instead of having Plaintiffs and Aggrieved Employees record the times they actually started and stopped working, Defendants had a uniform policy and practice of rounding all time entries to reflect scheduled start and end times rather

than paying Plaintiffs and Aggrieved Employees for all hours and minutes they actually worked. This practice of rounding all time entries was generally done to the detriment of Plaintiffs and Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

Because of the foregoing understatement of hours worked, Defendants also failed to pay Plaintiffs and Aggrieved Employees proper overtime wages. Plaintiffs and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiffs and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above, was worked by Plaintiffs and Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiffs and Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants did not pay Plaintiffs and Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiffs and Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiffs and Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which sick pay and vacation pay were calculated and paid.

Defendants had a common policy and/or practice of denying Plaintiffs and Aggrieved Employees proper meal periods. Specifically, Plaintiffs and Aggrieved Employees were required to work through their meal periods which they were consistently denied. Also, what meal periods Plaintiffs and Aggrieved Employees did take, were consistently less than 30 minutes, taken well after their fifth consecutive hour of work, and were on-duty due to Defendants' policy and practice of interrupting meal breaks with work demands, all in violation of Labor Code and applicable Wage Orders. Similarly, Plaintiffs and Aggrieved Employees were required to work in excess of ten (10) hours a day, without ever receiving a second meal compliant period, all in violation of Labor Code and applicable Wage Orders. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants have consistently failed to provide Plaintiffs and Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Specifically, Plaintiffs and Aggrieved Employees were required to work through their rest breaks which they were continuously denied. What rest breaks were taken were on-duty due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants also paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid.

Defendants had a common policy and practice of failing to reimburse Plaintiffs and Aggrieved Employees for necessary business expenditures incurred in execution of their duties under Defendants' employ. Defendants have failed to reimburse Plaintiffs and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants, including but not limited to personal cell phone usage, personal tools, such as power sanders, which Defendants required Plaintiffs and Employees to bring to work and use for work purposes, and mileage when Plaintiffs and Employees drove personal vehicles while on the job, all of which were necessary to perform their duties under Defendants' employ.

Defendants consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, Defendants failed to provide Plaintiffs and Employees with accurate itemized wage statements in writing, as required by the Labor Code. Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of compensation of Plaintiffs and Aggrieved Employees. Additionally, the wage statements given to Plaintiffs and Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Plaintiffs and Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiffs and Aggrieved Employees were confusing and required Plaintiffs and Aggrieved Employees to refer to outside sources to verify whether their pay was correct, potentially resulting in a miscalculation by the Plaintiffs and Aggrieved Employees. Moreover, the wage statements given to Plaintiffs and Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and total hours worked due to rounding as discussed above.

Moreover, Defendants failed to pay Plaintiffs and 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 Plaintiffs and 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, Plaintiffs and the Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

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

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

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

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

Defendants thus failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Specifically, Plaintiffs and Aggrieved Employees were not paid for the time that they worked, including as alleged above in connection with working during meal breaks, rounding of timekeeping entries, and working



"pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, and helping coworkers with work tasks. Moreover, Plaintiffs and Aggrieved Employees were not paid for the time that they spent answering work-related phone calls and texts while off-the-clock. Thus, Plaintiffs and Aggrieved Employees were required to work hours without wages. Additionally, Defendants did not pay Plaintiffs and Aggrieved Employees at the applicable minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Plaintiffs and Aggrieved Employees. In light of the forgoing, the Plaintiffs and Aggrieved Employees seek to recover wages and penalties. Plaintiffs and 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). Plaintiffs and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiffs and other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs 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 Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Plaintiffs and Aggrieved Employees earned wages and overtime. Specifically, Plaintiffs and Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Plaintiffs and Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time discussed above—including the time they worked "pre-shift" and "post-shift" without compensation by going through COVID screenings, assisting customers, helping coworkers with work tasks, and being required to respond to work-related phone calls and texts received while off-the-clock, as well as time spent working while clocked out for meal breaks—caused Plaintiffs and Aggrieved Employees to work in excess of 8 hours a day and/or 40 hours a week, further entitling Plaintiffs and Aggrieved Employees to overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Additionally, Defendants did not pay Plaintiffs and Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiffs and Aggrieved Employees nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate all remunerations, including nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiffs and Aggrieved Employees worked overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. This unpaid off the clock work resulted in Plaintiffs and 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, Plaintiffs and Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Plaintiffs and Aggrieved Employees a reasonable protocol for correcting time records when Plaintiffs and Aggrieved Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Plaintiffs and Aggrieved Employees' detriment. Defendants have also violated these provisions by requiring Plaintiffs and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

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

On the occasions when Plaintiffs and Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Plaintiffs and 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, Plaintiffs and Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any meal period or rest period premiums when Defendant did attempt to pay them, resulting in further violations of section 226.7.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs 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 Plaintiffs and Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations or failed to provide rest breaks altogether. What rest breaks were provided were not duty-free due to Defendants' policy and practice of interrupting rest breaks with work demands. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and Aggrieved Employees but

Defendants failed to include these forms of remuneration in the regular rate of pay from which premium pay was calculated and paid. Therefore, Defendants also miscalculated the rate at which they paid any rest period premiums when Defendants did attempt to pay them, resulting in further violations of section 226.7.

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

Under the PAGA, and following exhaustion of the notice period, Plaintiffs 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 Pay Vacation Wages

Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and Aggrieved Employees but Defendants failed to include these forms of remuneration in the regular rate of pay from which vacation wages were calculated and paid. Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 227.3. Plaintiffs accordingly seek this relief available for Defendants' violations of section Labor Code § 227.3 in connection with Aggrieved Employees and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 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 Comply with Labor Code §§ 245 *et seq.* and 246

California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Plaintiffs and Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants 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 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Plaintiffs and 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 Plaintiffs

and 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. Plaintiffs and Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 245 *et seq.* and 246. Plaintiffs accordingly seek 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, 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 Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Plaintiffs and Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Defendants have failed to reimburse Plaintiffs and Aggrieved Employees for expenses necessarily incurred in the performance of their job duties for Defendants including but not limited to personal cell phone usage, the cost of personal tools, such as power sanders, which Defendants required Employees to bring to work and use for work purposes, and the cost of mileage when Employees drove personal vehicles while on the job, all of which were necessary to perform their 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, Plaintiffs and 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 seek 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).

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), Plaintiffs and 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 Plaintiffs and Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Plaintiffs and Aggrieved Employees, by Defendants, failed to accurately account for wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and reflected incorrect hours worked due to the rounding of timekeeping entries. Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned. Additionally, the wage statements given to Plaintiffs and Aggrieved Employees, by Defendants, failed to include the requirements enumerated above. Plaintiffs and Aggrieved Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). The wage statements provided to Plaintiffs and Aggrieved Employees were confusing and required Plaintiffs and 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 Plaintiffs and 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, Plaintiffs and 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, Plaintiffs assert PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiffs and Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, …"

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

In failing to pay Plaintiffs and Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Plaintiffs and Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Plaintiffs and Aggrieved Employees, as well as the meal and rest periods taken by

Plaintiffs and Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

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

Given the above described off the clock work, Plaintiffs were not paid at the correct overtime rate for all hours they worked after eight hours into a shift or over forty in a work week and were not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Plaintiffs and Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Plaintiffs and Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Plaintiffs and Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Plaintiffs and Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

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

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Plaintiffs and Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not properly recording meal period start and end times, all discussed herein, Defendants failed to maintain

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

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

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiffs, 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 or within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Plaintiffs and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiffs assert 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 Plaintiffs and Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 *et seq*.

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

After complying with the notice procedures of Labor Code § 2699.3, Plaintiffs 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.

Plaintiffs and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq*., 246, 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 Plaintiffs and the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked under Labor Code §§ 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

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

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor

Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

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

(f) 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.* and 246 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) Failure to Pay Vacation Wages: For Defendants' failure to provide Employees with all their vacation days in violation of Labor Code § 227.3and seeking the civil and statutory penalties available and applicable under Labor Code § 227.3, 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); and

(h) 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 therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiffs alleges have been violated, including the facts and relevant theories alleged against Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Theatres, LLC, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and any other named Defendants and joint employers. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiffs respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

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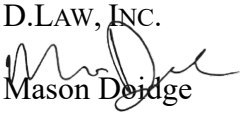
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Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiffs and the Aggrieved Employees should include them in an amended Labor Code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

Regards,

D.LAW, INC.



Mason Doidge

Cc: Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Theatres, LLC, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC by Certified Mail

EXHIBIT 5