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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

SHERRY MICHELLE HUNTINGTON, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

HM.CLAUSE, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CV-24-010298

CLASS ACTION

Assigned for All Purposes To:
Hon. Clifford Tong
Dept.: 23

**DECLARATION OF NATALIE
HARITOUNIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
(3) SETTING HEARING FOR FINAL
APPROVAL**

Date: October 28, 2026
Time: 8:30am
Dept: 23

1 range of defendants. These cases have involved the gamut of wage-and-hour claims, including
2 claims for failure to pay minimum wages, unpaid wages and overtime, failure to provide meal
3 breaks, inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in
4 the present matter.

5 6. I am experienced in prosecuting employment matters, particularly class actions. In
6 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
7 class-action lawsuits pending in various state and federal jurisdictions throughout California.

8 7. My extensive experience in litigating employment wage-and-hour matters has been
9 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
10 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
11 wage-and-hour litigation requires skill and knowledge concerning the constantly evolving
12 substantive law (state and federal), as well as the procedural law of class action litigation. In this
13 action, I am fully equipped to use the skills and knowledge I have developed. Therefore, on the
14 account of my resources, experience, and knowledge, I am well qualified to act as Class Counsel
15 and represent Plaintiff and the putative Class Members in this action.

16 8. I recently successfully certified a case, and when necessary, we pursue cases on appeal.
17 Owing to my experience, I am well qualified to evaluate the class claims in this action, to
18 evaluate settlement v. trial and defenses raised. The following are examples of some of my cases
19 that have resulted in favorable settlements for the employee class members and aggrieved
20 employees I have represented: (a) *Martinez v. Villa & Sons Enterprises, Inc.*, San Benito County
21 Superior Court, Case No. CU-19-00120 (Hon. J. Omar Rodriguez); (b) *Herrera v. Pomona*
22 *Quality Foam, LLC*, Los Angeles County Superior Court, Case No. 19STCV38235 (Hon. Ann
23 Jones); (c) *Torres v. Precision Plastics Packaging Co.*, Orange County Superior Court, Case No.
24 30-2019-01063177-CU-OE-CXC (Hon. Peter Wilson); (d) *Marchbanks v. Torrid Administration,*
25 *Inc.*, et al. San Diego County Superior Court, Case No. 37-2020-00008179-CU-OE-NC (Hon.
26 Blaine K. Bowman); (e) *Becerra v. Tetra Tech, Inc.*, Sonoma County Superior Court, Case No.
27 SCV-265511 (Hon. Patrick Broderick); (f) *Foster v. Deckers Outdoor Corporation*, Santa
28 Barbara County Superior Court, Case No. 20CV03699 (Hon. Donna D. Geck); (g) *Stakely v.*

1 *Windsor Palms Care Center of Artesia*, Los Angeles Superior Court, Case No. 21STCV10507
2 (Hon. Carolyn B. Kuhl); (h) *Sosa v. Aurora World, Inc.*, Los Angeles County Superior Court,
3 Case No. 19STCV20182 (Hon. Lawrence R. Riff); (i) *Torres v. Rapid Manufacturing*, Orange
4 County Superior Court, Case No. 30-2019-01089455-CU-OE-CXC (Hon. William D. Claster);
5 (j) *Aleman v. Moonlight Packing Corporation*, Fresno County Superior Court, Case No.
6 20CECG01196 (Hon. Kristi Culver Kapetan); (k) *Salazar v. Happy FM Group, Inc.*, Los Angeles
7 Superior Court, Case No. 20STCV40294 (Hon. Stuart M. Rice); (l) *Baldwin v. Patagonia, Inc.*,
8 Los Angeles Superior Court, Case No. 20STCV40245 (Hon. Maren Nelson); (m) *Smith v. NOIA*
9 *Residential Services, Inc.*, Fresno Superior Court, Case No. 20CECG01820 (Hon. Jeffrey Y.
10 Hamilton); (n) *Alvarado v. Faro Logistics Solutions, Inc.*, San Bernardino Superior Court, Case
11 No. CIVSB2200441 (Hon. Joseph Ortiz); (o) *Hernandez v. Clark Pacific Corporation*, Yolo
12 Superior Court, Case No. CV-2019-1053 (Hon. Samuel T. McAdam); (p) *Romero v. Hydraulics*
13 *International, Inc.*, Los Angeles Superior Court, Case No. 19STCV04463 (Hon. Stuart M. Rice);
14 and (q) *Broersma v. Platt College Los Angeles, LLC*, Los Angeles Superior Court, Case No.
15 20STCV47502 (Hon. Stuart M. Rice).

16 9. For purposes of this motion, the “Class” or “Class Members” consist of all persons
17 employed by Defendant in California and classified as non-exempt, hourly employees who
18 worked for Defendant at any time between October 16, 2021, through the date the Court grants
19 preliminary approval of the class settlement. I do not believe that I have any conflicts of interest
20 with the Class or with the Class Representative. I am not related to the Class Representative. I
21 have not previously represented Defendant in any matter. I respectfully submit that I, and D.Law,
22 Inc. are well suited to act as Class Counsel in this action, and we have and will continue to
23 vigorously represent the interests of the Class Members.

24 **PROCEDURAL HISTORY**

25 10. On December 18, 2024, Plaintiff Huntington filed a class action complaint against
26 Defendant alleging the following causes of action against Defendant: (1) Failure to Pay Minimum
27 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period
28 Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5)

1 Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor
2 Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code § 1174 and 1174.5;
3 (9) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (10)
4 Violation of Business and Professions Code § 17200 *et seq.*

5 11. Plaintiff contends that Defendant failed to pay Class Members all wages due and
6 owing, including by requiring off-the-clock work, failing to incorporate non-discretionary
7 bonuses into the regular rate of pay used to calculate and pay for overtime pay, sick pay, and meal
8 and rest break premiums, failing to provide meal and rest breaks, failing to furnish accurate wage
9 statements, failing to timely pay wages including final wages, failing to maintain accurate
10 records, and failing to reimburse necessary business expenses.

11 12. On December 18, 2024, Plaintiff submitted a Private Attorneys General Act (“PAGA”)
12 notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendant. A
13 true and correct copy of the confirmatory email and the LWDA letter submitted on behalf of
14 Plaintiff is attached hereto as **Exhibit 2**. The LWDA did not express an interest in investigating
15 Plaintiff’s claims within the 65-day period. Therefore, on February 21, 2025, Plaintiff filed a First
16 Amended Complaint adding a cause of action for penalties under PAGA.

17 13. On March 17, 2026, Plaintiff filed a Second Amended Complaint adding a cause of
18 action for failure to pay proper sick pay under Labor Code § 246. The Second Amended
19 Complaint is the Operative Complaint.

20 **INVESTIGATION AND DISCOVERY**

21 14. I have participated in all discovery, mediation, and settlement negotiations since the
22 inception of Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched
23 the facts and circumstances underlying the pertinent issues and the law applicable thereto. This
24 required thorough discussions and interviews between Class Counsel and Plaintiff, as well as
25 preliminary research into the various legal issues involved in the case. After conducting their
26 initial investigation, Class Counsel determined that Plaintiff’s claims were well-suited for class
27 and representative action adjudication owing to what appeared to be a common course of conduct
28 affecting a similarly situated group of employees.

1 15. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
2 and claims giving rise to the action, including: (1) conducting informal discovery and meeting
3 and conferring with defense counsel about same; (2) reviewing and analyzing time and pay
4 records as well as employment handbooks, Plaintiff's personnel files, relevant policies, and other
5 documentation; (3) researching the applicable law and potential defenses; (4) constructing
6 damage models based on interpretations of California law; and (5) reviewing information
7 provided by Defendant at the mediation. The Class enumerated in this action is ascertainable
8 because the Class Members may be readily identified by reference to Defendant's records.
9 Defendant has agreed to share the information from these records with the Settlement
10 Administrator in order to identify and contact the Class Members. I understand there are
11 approximately 278 total Class Members.

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

17 17. On May 27, 2025, the parties mediated this case with Lonnie Giamela, Esq., a
18 respected and highly experienced mediator in wage-and-hour class actions. During mediation,
19 Plaintiff and Defendant's counsel discussed all aspects of the case, including the risks of litigation
20 and the risks to both parties of proceeding with a motion for class certification as well as the law
21 relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. As a result of
22 the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the
23 Settlement Agreement. From Class Counsel's review of the facts, strengths and weaknesses of the
24 case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation
25 experience, Class Counsel believes that the recovery for each class member is fair and reasonable
26 taking into consideration the amounts received in other wage-and-hour class actions, the risks
27 inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to
28 the settlement award he or she will receive. Further, and based on the settlement negotiations,

1 which were extensive and conducted in good faith and at arm's length between attorneys with
2 substantial experience litigating class actions and wage-and-hour cases, the Settlement Agreement
3 was the product of a non-collusive settlement process in which the parties were forced to make
4 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

5 SUMMARY OF SETTLEMENT

6 18. The parties have executed a Settlement Agreement attached hereto and incorporated
7 herein as **Exhibit 1**. Defendant has agreed to pay Five Hundred and Thirty-Eight Thousand Three
8 Hundred and Thirty-Five Dollars (\$538,335.00) ("Gross Settlement Amount") on a non-
9 reversionary basis to settle and release all claims asserted by Plaintiff in the Action on behalf of
10 the proposed Class. (Exh. 1 [Settlement Agreement], §1.23; 3.1)

11 19. The Settlement Agreement defines the "Class" or "Class Members" as "all current and
12 former non-exempt hourly employees who worked for Defendant in California at any time
13 between October 16, 2021, through the date the Court grants preliminary approval of the class
14 action settlement." (Exh. 1, §§ 1.4; 1.8; 1.11) However, it does not include any person who
15 submits a timely and valid request for exclusion. (Exh. 1, §1.29) "Class Period" means the period
16 from October 16, 2021, through the date the Court grants preliminary approval of the class action
17 settlement. (Exh. 1, §1.11)

18 20. The "Net Settlement Amount" shall be the Gross Settlement Amount, less the
19 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, Settlement
20 Administration Costs, and seventy-five percent (65%) of the LWDA Payment. (Exh. 1, §1.35)
21 These amounts are detailed as follows:

- 22 a) not more than One Hundred and Seventy-Nine Thousand Four Hundred and
23 Forty-Five Dollars (\$179,445.00) to Class Counsel for attorneys' fees, and not
24 more than Twenty-Five Thousand Dollars (\$25,000.00) to Class Counsel for
25 litigation costs (Exh. 1, §3.2.2);
 - 26 b) not more than Seven Thousand Three Hundred Dollars (\$7,300.00) for the
27 Settlement Administration Costs (Exh. 1, §3.2.3);
- 28

- 1 c) not more than Ten Thousand Dollars (\$10,000.00) to Plaintiff for a Class
2 Representative Enhancement Payment (Exh. 1, §3.2.1); and,
3 d) Fifty Thousand Dollars (\$50,000.00) for civil penalties under the PAGA, where
4 65% (\$32,500.00) will be paid to the LWDA and 35% (\$17,500.00) will be
5 included in the Net Settlement Amount and distributed to Settlement Class
6 Members). (Exh. 1, §3.2.5)

7 21. The “Individual Settlement Payment,” which is each Class Member’s share of the Net
8 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
9 the number of workweeks a Class Member worked during the Class Period as a non-exempt
10 employee in California. (Exh. 1, §§ 1.24, 3.2.4)

11 22. Defendant’s corporate payroll tax obligations shall be paid in addition to the Gross
12 Settlement Amount, and none of the Gross Settlement Amount will revert to Defendant. (Exh. 1,
13 § 3.1)

14 23. The settlement amount was a compromise figure, factoring in the inherent risks related
15 to certification, liability, and damages. However, taking into account all of the circumstances of
16 the action and the defenses raised by Defendant against certification, liability, and damages, Class
17 Counsel believes that the settlement is fair and reasonable.

18 24. Class Members shall each receive a Notice of Settlement (“Class Notice”) via regular
19 First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
20 List. Before mailing, the Settlement Administrator will perform a search based on the National
21 Change of Address Database for information to update and correct for any known or identifiable
22 address changes. (Exh. 1, § 7.5.2.) If the Class Notice is returned as non-deliverable on or before
23 the Response Deadline and a new address is obtained by way of a returned Class Notice, then the
24 Settlement Administrator will promptly forward the original Class Notice to the updated address
25 via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing.
26 (Exh. 1, § 7.5.3.)

27 25. Class Members will have an opportunity to dispute the information provided in their
28 Class Notice, and they must timely produce evidence to support the information is inaccurate.

1 (Exh. 1, § 7.7) The Settlement Administrator shall decide the dispute and may ask Defendant to
2 produce the personnel and payroll files of the Class Member disputing their credited workweeks
3 in order to resolve the dispute. (Exh. 1, § 7.7.)

4 26. Class Members wishing to opt-out from the Settlement Agreement must sign and
5 postmark a written request for exclusion to the Settlement Administrator. (Exh. 1, § 7.6.) Class
6 Members will also have the opportunity to object to the Settlement Agreement, by serving a copy
7 of the objection to the Settlement Administrator. (Exh. 1, § 7.8.) All opt outs and objections must
8 be served within sixty (60) calendar days of first mailing of the Class Notice. (*Id.*) Class
9 Members who do not serve written objections may not object to the settlement by way of appeal.
10 (*Id.*)

11 **THE STRENGTH OF PLAINTIFF’S CASE**
12 **IN LIGHT OF THE SETTLEMENT AMOUNT**

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

18 28. The strength of the plaintiff’s case in light of the settlement amount is deemed by
19 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
20 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges, and Defendant disputes, that
21 Defendant failed to pay minimum wages and overtime, failed to provide proper meal breaks or
22 provide premium pay in lieu thereof, failed to provide proper rest breaks or provide premium pay
23 in lieu thereof, failed to provide accurate wage statements, failed to timely pay all wages upon
24 termination, and failed to reimburse necessary business expenses. Plaintiff seeks related
25 violations of California’s Business & Professions Code, and penalties pursuant to Labor Code §
26 2699 *et seq.* Plaintiff conducted informal discovery and investigated each of the claims she
27 alleged. Specifically, Defendant produced the following: (a) all versions of Defendant’s employee
28 handbooks in effect during the Class Period; (b) all versions of Defendant’s policies and

1 procedures pertaining to minimum wages, overtime, meal breaks, and rest breaks, which were in
2 effect during the Class Period; (c) Plaintiff's personnel files; (d) Plaintiff's timekeeping and
3 payroll records; (e) Class Members' timekeeping and payroll records; and (f) information on the
4 class demographics, including the total number of Class Members during the Class Period, total
5 number of Aggrieved Employees during the PAGA Period, total number of current employees,
6 total number of former employees in the relevant time period, average hourly rate of pay, total
7 number of workweeks worked during the Class Period, and the total number of paychecks issued
8 during the relevant time period. The merits of each of these claims will be addressed separately
9 below.

10 29. Based on the data provided, Class Counsel estimated the following maximum
11 exposures: unpaid wage claim at \$411,426.50, meal period claim at \$285,480.00, rest period
12 claim at \$285,480.00, wage statement claim at \$377,800.00, waiting time penalties at
13 \$791,992.89, reimbursement of business expenses claim at \$13,900.00, and on PAGA, Plaintiff
14 estimated the maximum exposure at \$387,000.00.

15 30. However, taking into account the difficulties of proof, Defendant's defenses, and other
16 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
17 relief that the class could reasonably expect to be awarded at trial is significantly less than the
18 maximum exposure.

19 **Minimum Wages and Overtime**

20 31. Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
21 wages for all hours worked, in violation of minimum wage laws. Plaintiff contended that Class
22 Members were not paid all wages they were owed, including for all worked performed and for all
23 overtime hours worked. Specifically, Plaintiff alleged, and Defendant disputes, that Defendant
24 unlawfully rounded down the hours Class Members worked. Plaintiff contended Defendant was
25 unlawfully rounding down Class Members hours worked from the beginning of the class period
26 through May of 2023. Moreover, Plaintiff alleged Class Members were required to perform pre-
27 shift and post-shift off the clock work.

28 ///

32. Defendant contended that they paid for all reported hours worked, that Class Members were trained to record all hours worked, and that they paid proper minimum wages. Defendant also maintained that the allegations regarding failure to pay wages for hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant argued that given their written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified.

33. Defendant also contended that approximately 45% of the class members signed arbitration agreements that were introduced to employees in 2023. Given the difficulty in certifying these claims, taking into consideration Defendant's defenses and the arbitration agreements, Class Counsel had to apply a significant discount to the damages.

34. Based on the above detailed facts, Class Counsel's estimated Defendant's exposure on unpaid wages claims to be approximately \$411,426.50 (unpaid wages due to rounding and unpaid wages due to 5 minutes of off the clock work). Plaintiff does not believe Defendant has exposure on the off-the-clock claim given that many individualized issues would apply, making certification of this claim difficult to achieve.

Meal Periods and Rest Breaks

35. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period.”).

36. Plaintiff argued that Defendant had a common practice and policy of denying compliant meal periods. Specifically, Plaintiff and Class Members were regularly required to work through their meal periods, never being provided the opportunity to take uninterrupted thirty (30) minute meal periods in accordance with California law. Moreover, what meal periods Class Members did receive were provided well after their fifth consecutive hour of work.

37. Defendant contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact, all employees took their meal period at the 4-hour mark.

38. Class Counsel estimated Defendant's maximum total exposure on the meal break claim at approximately \$285,480.00 (24,000 workweeks x .5 (1 meal break violation every other week) x \$23.79 average hourly pay). However, Class Counsel believes this estimate is high given that Defendant's meal break policy was valid, and many individualized issues would apply, making certification of this claim difficult to achieve.

39. The same argument applied to rest breaks. Plaintiff contended that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift which they were denied. Class Members were required to work through their rest breaks, and through their entire shifts.

40. Defendant maintained that they did provide the reasonable opportunity for Class Members to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded, and Defendant disputes all allegations that breaks were not received. As these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break claim.

41. Class Counsel estimated Defendant's maximum total exposure on the rest break claim at approximately \$285,480 (24,000 workweeks x .5 (1 rest break violation every other week) x \$23.79 average hourly pay). However, Class Counsel believes this estimate is high given that Defendant's rest break policy was valid, and many individualized issues would apply, making certification of this claim difficult to achieve.

Paystub Violations

42. Plaintiff also contended that Defendant failed to provide Class Members with accurate, itemized wage statements in writing as required by California Labor Code § 226(a) because the wage statements failed to accurately account for unpaid wages and overtime due to unlawful rounding and underreporting of hours and off-the-clock work. Moreover, Plaintiff contended the wage statements failed to accurately account for premium pay for deficiently provided meal and rest breaks which Defendant knew or reasonably should have known were owed to Plaintiff and

1 Class Members. As a direct and proximate cause of Defendant's violation of Labor Code
2 § 226(a), the Class Members suffered injuries, including, among other things, confusion over
3 whether they received all wages owed to them. Pursuant to Labor Code §§ 226(a) and 226(e),
4 employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
5 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in
6 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).
7 They are also entitled to an award of costs and reasonable attorneys' fees.

8 43. Defendant contends that Plaintiff's claim for further Labor Code § 226(e) penalties
9 would depend in large part on their underlying meal period and wage claims, and thus be subject
10 to the same defenses. Additionally, Defendant argues this claim has little or no value. *See*
11 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336–37 (2018) (wage statements
12 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
13 determined that employer did not properly pay all wages due). Defendant further contends that
14 Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or
15 she "suffered injury" from the employer's failure to provide compliant wage statements, *see*
16 *Elliot v. Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181 (2008) (applying California law)
17 (holding employee was not entitled to penalties because no injury was shown), and (2)
18 Defendant's noncompliance was "knowing and intentional." Finally, because the damages for this
19 cause of action are penalties, the statute of limitations only runs from one year prior to the filing
20 of the original complaint. *See* Cal. Civ. Pro. § 340.

21 44. Class Counsel estimated Defendant's maximum total exposure on the section 226 claim
22 at approximately \$377,800.00 (\$50/\$100 x 3,870 number of paystubs from December 18, 2023,
23 to May 27, 2025; based on 184 employees). Class Counsel believes it may be difficult to prevail
24 on this claim because Class Members would need to show that they suffered an injury and that
25 Defendant's noncompliance was knowing and intentional (on top of the challenges described
26 above with the underlying wage and break claims), which are both subject to many individualized
27 issues making certification of this claim difficult to achieve.

28 ///

Failure to Pay Final Wages

45. In failing to pay the California Class Members their minimum wages, overtime wages, and premium pay for deficiently provided meal periods and rest breaks, all discussed above, Defendant willfully failed to pay the California 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.

46. Labor Code § 203 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 shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because Class Members stopped working for Defendant but again were not paid their full compensation for the reasons discussed above, Class Members did not receive all wages due upon termination of employment.

47. Defendant argued 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.

A "good faith dispute" that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a "good faith dispute."

Defendant maintained that because it had viable defenses in both law and fact, especially in light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a three-year limitations period under Labor Code § 203(b).

48. Class Counsel estimated Defendant's maximum total exposure on the section 203 claim at approximately \$791,992.89 (137 terminated employees x 30 days x 8.1 hours per shift x \$23.79

1 average rate of pay). Class Counsel estimates it would be difficult to recover waiting-time
2 penalties given that Plaintiff would need to show willfulness on top of proving the underlying
3 wage and break claims, which are both subject to many individualized issues making certification
4 of this claim difficult to achieve.

5 **Failure to Reimburse for Necessary Business Expenditures**

6 49. Labor Code § 2802 provides that an employer must reimburse employees for all
7 necessary expenditures incurred in the performance of their job duties. Plaintiff worked for
8 Defendant's and in the course of performing her job duties, incurred necessary business-related
9 expenses, including, cellular and home internet expenses. Defendant maintained that Plaintiff and
10 the Class members were not required to use their personal cell phones or home internet.

11 50. Class Counsel estimated Defendant's maximum total exposure for failing to reimburse
12 business expenses at approximately \$13,900 (\$50 x 278 employees). Class Counsel believes it
13 would be difficult to recover on this claim because Defendant did not require Class Members to
14 use their personal cell phones or home internet, and it is an individualized claim that only applies
15 to Plaintiff and it would be difficult to certify in light of all the preceding arguments.

16 **PAGA Penalties**

17 51. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
18 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendant's
19 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
20 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
21 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
22 for each aggrieved employee per pay period for the initial violation and two hundred dollars
23 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
24 Labor Code § 2699(i), sixty-five (65) percent of the penalties recovered must be allocated to the
25 Labor and Workforce Development Agency (LWDA), with the remaining thirty-five (35) percent
26 allocated to the affected employees. The limitations period as for all penalties is one year prior to
27 the filing of the complaint.

28 ///

1 52. The provisions of the Labor Code potentially triggering PAGA penalties in this case
2 include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194.
3 Defendant asserted that if PAGA penalties were mandatory, an employer’s PAGA liability would
4 be huge because of the possibility of collecting multiple civil penalties for a single violation, and
5 thus such penalties would almost always dwarf the damages available under the causes of action
6 proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2)
7 states that “a court may award a lesser amount than the maximum civil penalty amount specified
8 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
9 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See, e.g., Lopez v.*
10 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018) (recognizing court’s
11 ability to reduce PAGA penalties). Courts have held that situations similar to the current one (e.g.
12 injuryless violations, technical errors, and substantial compliance) should lead to reductions in
13 penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1134–35
14 (2012) (holding that reduction was justified when employer “attempted to comply with the law”);
15 *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at
16 *8–9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from \$2.8 million
17 to \$500,000 – when “employees suffered no injury” employers were “not aware” of the violation
18 and “took prompt steps to correct all violations once notified”). Defendant here maintained that it
19 had a strong argument that it would be unjust to award maximum PAGA penalties.

20 53. Furthermore, PAGA penalties are also derivative of each and every other claim, and
21 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
22 underlying claims. Finally, under *Amaral v. Cintas Corp.*, 163 Cal.App.4th 1157 (2008), it can be
23 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
24 initial violations under the applicable statutes because Defendant has never been notified of the
25 alleged violations. *Id.* at 1208–09. Moreover, Section 2699(e)(1) authorizes the Court to exercise
26 the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App. 4th
27 1157, 1211–12. Therefore, if the Labor Commissioner - on whose behalf Plaintiff is prosecuting
28 this action for civil penalties - would not impose civil penalties in a case like this, the Court may

1 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
2 Cal.App.4th 1112, 1136 (2012), the Court of Appeal affirmed the trial court's reduction of PAGA
3 civil penalties by 30 percent, finding that awarding the full penalties would have been "unjust"
4 because "...a court may award a lesser amount than the maximum civil penalty amount specified
5 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
6 result in an award that is unjust, arbitrary and oppressive, or confiscatory."

7 54. Class Counsel estimated Defendant's maximum total exposure on the PAGA claim at
8 approximately \$387,000.00 (\$100 x 3,870 number of paystubs in the PAGA Period). However,
9 Class Counsel notes that owing to the discretionary nature of PAGA penalties and the foregoing
10 case law, it is unlikely the Court would award the full penalty and that it would be substantially
11 reduced. Class Counsel applied discounts in light of the countervailing arguments with regard to
12 the other causes of action, and moreover the Court's power to award "a lesser amount than the
13 maximum civil liability." The parties also considered that the purpose of PAGA is to "achieve
14 maximum compliance with state labor laws," *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.
15 4th 348, 379 (2014). This makes the settlement's contemplated PAGA payment of \$50,000.00
16 appropriate.

17 **Unfair Business Practices**

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

22 **Summary**

23 56. The foregoing discussion has sought to explain how the settlement amount is adequate
24 in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of
25 Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of
26 those causes of action, and relating Defendant's legal and factual arguments that worked to
27 derogate from the strength of Plaintiff's case.

28 ///

1 57. Class Counsel had to apply appropriate discounts in light of the facts and law as
2 discussed above. In addition, meal period liability exposure is limited by the fact that not all Class
3 Members worked on the same schedule and under the same supervisors, making the certification
4 of all Class Members across all locations less than a certainty. Thus, this settlement, like most
5 others, was the product of compromise. Because of these and other risks, a recovery of
6 \$538,335.00 under the Settlement Agreement is an excellent result. Under the Settlement, each of
7 the approximately 278 Class Members will receive on average, assuming they worked throughout
8 the class period, \$1,936.46 after expenses.

9 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**

10 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**

11 **STATUS THROUGH TRIAL**

12 58. The next *Clark/Kullar* factors recognize that settlements take into consideration the
13 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
14 certification. Consequently, it is proper that trial courts should keep these considerations in mind
15 when judging the adequacy of class action settlements.

16 59. Further litigation of this case posed real risks for a number of reasons. First, there were
17 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
18 the previous section. In that section, it was observed that almost every cause of action was subject
19 to some unique indeterminacy of its own, and that the derivative causes of action were thus
20 subject to a double indeterminacy, both their own and those of the causes of action on which they
21 were based.

22 60. The parties disputed the effect of these and other issues on class certification and
23 decertification. Class Counsel maintained that there were several legal and factual questions at
24 issue in the case that could best be decided on a class-wide basis. Class Counsel contended that
25 the same policies and practices applied to all Class Members and therefore common questions
26 obtained and were likely to predominate over individual inquiries. Defendant disputed these
27 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
28 such as this one. Defendant also argued that its policies were compliant with the law, while

1 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
2 give rise to common questions amenable to certification. Thus, the parties had set positions on the
3 propriety of certifiability and liability that did not admit of an easy resolution.

4 61. Finally, it is always preferable to reach a relatively early resolution of a dispute
5 because, in addition to what has already been said, such resolutions save time and money that
6 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial,
7 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this
8 case settled after further litigation, the settlement amount would have taken into account the
9 additional costs incurred, and there might have been less available for Class Members after all
10 was said and done. This is not just an abstract contention. The parties were moving into the phase
11 of this litigation where they would have had to depose a number of people such as managers,
12 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
13 been in the offing. The parties were also aware that a class action trial would be a complicated
14 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
15 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
16 benefits are not insignificant for anyone, especially given the current economic climate.
17 Consequently, the risk and expense of further litigation outweighed any benefit that might have
18 been gained otherwise.

19 **NOTICE TO AND REACTION OF CLASS MEMBERS**
20 **TO THE PROPOSED SETTLEMENT**

21 62. It is premature to address this factor now, at the preliminary approval stage; however,
22 some observations are in order. First, the notification procedure set out in the Settlement
23 Agreement provides the greatest likelihood that each and every Class Member will receive the
24 Notice of Settlement (“Class Notice”), attached to the Settlement Agreement as **Exhibit A**. Under
25 the Settlement Agreement, the Settlement Administrator will send the Class Notice to each Class
26 Member via First Class U.S. mail. (Exh. 1, § 7.5.2.) Before mailing, the Settlement Administrator
27 will perform a search based on the National Change of Address Database for information to
28 update and correct for any known or identifiable address changes. (Exh. 1, § 7.5.2) If the Class

1 Notice is returned as non-deliverable on or before the Response Deadline and a new address is
2 obtained by way of a returned Class Notice, then the Settlement Administrator will promptly
3 forward the original Class Notice to the updated address via first-class regular U.S. mail,
4 indicating on the original packet the date of such re-mailing. (Exh. 1, § 7.5.3.) Thus, most, if not
5 all, Class Members will likely receive the Class Notice.

6 63. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
7 claims involved, the terms of the settlement, and their options thereunder. They provide for a
8 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
9 The efforts taken to ensure that Class Members receive the Class Notice and are well informed
10 about the settlement augur a favorable response rate.

11 64. All Class Members will benefit because Defendant who has been sued is generally
12 more likely to comply with the law in the future. If a Class Member disputes the number of
13 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the
14 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury
15 the workweeks that the Class Member claims to have actually worked for Defendant during the
16 Class Period. (Exh. 1, § 7.7.). After consultation with Class Counsel and Defendant's Counsel,
17 the Class Action Administrator will make a determination of the Class Member's total
18 workweeks during the applicable period.

19 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

20 65. The foregoing discussion establishes the fairness of the class-action settlement in the
21 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
22 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
23 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
24 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement in
25 mediation. Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence
26 of legal uncertainty, particularly with regard to Plaintiff's claim for failure to provide proper meal
27 periods. From Class Counsel's substantial experience with wage-and-hour class action lawsuits,
28 Class Counsel believes that this case could not have settled on better terms under the

1 circumstances. Request therefore is made that the settlement be granted preliminary approval so
2 that those persons whom it was intended to benefit shall be afforded the opportunity to determine
3 its adequacy.

4 **REQUEST FOR ATTORNEYS' FEES**

5 66. Under the Settlement, Class Counsel also requests, without opposition from Defendant,
6 an award of Attorneys Fees and Costs consisting of: (1) One Hundred and Seventy-Nine
7 Thousand Four Hundred and Forty-Five Dollars (\$179,445.00) in Attorneys' Fees and (2)
8 Twenty-Five Thousand Dollars (\$25,000.00) for reimbursement of Class Counsel's costs. (Exh.
9 1, §3.2.2). This request is fair, reasonable, and adequate to compensate Class Counsel for the
10 substantial work they have put into this case and, moreover, the risk they assumed by taking it in
11 the first place. The attorneys' fees award is intended to reimburse Class Counsel for all
12 uncompensated work that they have already done and for all the work they will continue to do in
13 carrying out and overseeing the notification to Class Members, communicating with Class
14 Members regarding her claims, and assisting in the administration of the settlement if it is
15 preliminarily approved.

16 67. Class Counsel took this case on a contingent-fee basis against a business represented
17 by a reputable defense firm. When we take contingent cases, we must pay careful attention to the
18 economics involved or one bad case can destroy years of work. Accordingly, when we take
19 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
20 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
21 number of hours in a day is limited. Because of this, when we take on one particular matter, we
22 are unable to take on other matters. When Class Counsel became involved in this case, we
23 realized the time commitment that it would entail and we were forced to turn down matters that
24 we otherwise should have been able to handle. In sum, this case claimed a significant portion of
25 Class Counsel's time and attention throughout its pendency.

26 68. The requested fee is reasonable for the services provided to Class Members and for the
27 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
28 *Bihun v. AT&T Information System*, 13 Cal.App.4th 976, 997 (1993), Class Counsel's fees would

1 still be justified. Here, the lodestar may exceed the requested fees. Class Counsel will more fully
2 brief the Court on its lodestar in the motion for final approval.

3 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

4 69. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in
5 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
6 apprising herself of her rights, deciding whether remedial action should be taken, how it should
7 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours
8 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only
9 her own rights but also those of her co-workers by filing a class action lawsuit.

10 70. The courage it took to stand up to Defendant by filing and litigating this action in this
11 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation
12 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable
13 resources, and Plaintiff justifiably fear the fact that she served as class representatives in a wage-
14 and-hour class action will not be lost on a prospective employer who has to choose between an
15 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is
16 particularly real in the information age, where employers can, more easily than ever, perform
17 background checks of prospective employees, sometimes with the stroke of a key. It is common
18 for employers to screen employee candidates to determine whether they have ever filed suit, and
19 employee candidates who might be branded "litigious" are likely to be screened out of the
20 process. In fact, an entire industry has developed for providing employers with background
21 information on employee candidates.

22 71. But Plaintiff did not allow her fear of the potential repercussions of being a class
23 representative to deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
24 has been intimately involved in this case since its inception. She has devoted a substantial amount
25 of time to helping Class Counsel effectively develop and prosecute this action at every stage of
26 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class
27 Counsel on numerous occasions to discuss every aspect of her case. Plaintiff provided Class
28 Counsel with information about Defendant and about the industry generally, reviewed documents,

1 identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length,
2 participated in the mediation process, monitored the progress of the litigation with Class Counsel,
3 and reviewed and signed the Settlement Agreement.

4 72. Plaintiff has spent a significant amount of time with Class Counsel detailing her
5 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
6 action. She has diligently, adequately, and fairly represented Class Members, and has not placed
7 her interests above any member of the putative class. The payment to Plaintiff is intended to
8 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate
9 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by
10 bringing these violations to the attention of Class Counsel. She spent several hours answering
11 questions and providing information to Class Counsel throughout the pendency of this action. She
12 identified witnesses, explained to Class Counsel the day-to-day business practices of Defendant
13 with regard to work schedules and meal breaks, etc. The parties are in agreement that Plaintiff is
14 entitled to an enhancement for her time and effort in this matter. This sort of payment to a class
15 representative has been a common feature of settlements negotiated by Class Counsel and has
16 been routinely approved by trial courts.

17 73. In light of the foregoing, Class Counsel believes that the Class Representative
18 Enhancement payment in the amount of Ten Thousand Dollars (\$10,000.00) to Plaintiff is fair
19 and reasonable. This amount is a far cry from the \$50,000 of enhancement awards to the two
20 named plaintiffs approved by the trial court in *Clark*. See *Clark, supra*, 175 Cal.App.4th at 807.
21 Although Class Counsel appreciates that the Court has a duty to ensure that class representatives
22 are not overcompensated at the expense of the class, modest incentive awards in employment
23 class actions, such as the one here, are necessary not only to compensate the Class Representative
24 for the time she spent in the case, but also, and more importantly, to encourage aggrieved
25 employees to challenge questionable employment practices notwithstanding the very real
26 consequences they may face.

27 ///

28 ///

1 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

2 74. The proposed Classes satisfy the criteria for certification of a settlement class under
3 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to
4 the certification of the class for settlement purposes. In general, courts may take a proposed
5 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*
6 *Co.*, 48 Cal.App.4th 1794, 1807 fn. 19 (1996). Indeed, a “lesser standard” of scrutiny applies in
7 certifying classes for settlement purposes. *Ibid.* Therefore, the Court should take into
8 consideration the fact that the parties have settled their claims and stipulated to certification for
9 settlement purposes when assessing typicality and adequacy.

10 a. Numerosity. The putative classes are so numerous that joinder of all members is
11 impractical. Class Members are “all current and former non-exempt hourly employees who
12 worked for Defendant in California during the Class Period [between October 16, 2021, through
13 the date the Court grants preliminary approval of the class settlement].” There are approximately
14 278 persons answering to this definition. Thus, there are a sufficient number of Class Members to
15 warrant certifying this as a class action for settlement purposes.

16 b. Ascertainability. The putative classes are defined in a manner that is precise,
17 objective, and ascertainable. The Class Members have already been identified by reference to
18 Defendant’s payroll and personnel records.

19 c. Typicality. A class representative’s claims are typical when they arise from the
20 same event, practice, or course of conduct that gives rise to the claims of other putative class
21 members, and if their claims rest on the same legal theories. The class representative’s claims
22 must be “typical” but not necessarily identical to the claims of other class members. It is
23 sufficient that the representative is similarly situated so that he or she will have the motive to
24 litigate on behalf of all Class Members. *Classen v. Weller*, 145 Cal.App.3d 27, 47 (1983); *B.W.I.*
25 *Custom Kitchens v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987) (“[I]t has never been
26 the law in California that the class representative must have identical interests with the class
27 members.”). Thus, it is not necessary that the class representative should have personally incurred
28

1 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*,
2 91 Cal.App.4th 224, 228 (2001).

3 Plaintiff's claims are typical of Class Members' claims because they arose from the same
4 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant
5 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
6 practices at issue in this litigation. Accordingly, Plaintiff is a member of the Class. The central
7 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to
8 provide meal and rest periods, etc.), which would arise if this were an individual action brought
9 by Plaintiff, apply to the other Class Members as well, and the answer to these questions would
10 determine Defendant's liability to the entire putative class. Thus, Plaintiff's claims are typical of
11 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

12 d. Adequacy. A class representative must possess the same interest and suffer the
13 same injury as the class members. "To assure 'adequate' representation, the class representative's
14 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
15 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)*, 113 Cal.App.4th 195, 212 (2003).
16 Thus, the adequacy requirement is satisfied when the class representative's interests are not
17 antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal.App.3d 442, 451
18 (1976).

19 Plaintiff does not have any conflicts with the class and in fact her interests are aligned
20 with those of the class. Because Plaintiff's claims are identical to those that would be asserted by
21 the unnamed Class Members were they before the Court, Plaintiff has every interest in zealously
22 representing the unnamed class members. Plaintiff has not shrunk from this responsibility.
23 Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and
24 effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-
25 and-hour litigation, especially class actions, and have zealously represented the interests of the
26 class in litigating this case. *See infra* ¶¶3–9. Accordingly, the adequacy requirement is satisfied.

27 e. Commonality. Common questions of law or fact in this case predominate over
28 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged

1 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages
2 due to allegedly common and unlawful policies, failure to pay final wages when required, failure
3 to provide accurate wage statements, failure to pay employees on a timely basis, and largely
4 derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these
5 practices, including an alleged practice of failing to provide complete meal periods, related meal
6 period policies applicable to the class, and the alleged failure to provide corresponding premium
7 payments, affected class members in the same way. All class members were employed during the
8 Class Period. Therefore, the operative Complaint delineates a common course of conduct
9 applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of
10 the informal discovery produced by Defendant, and their discussions with Plaintiff, Plaintiff
11 contends the evidence supports her position that the employment practices and policies of
12 Defendant's business were consistent and uniform.

13 f. Predominance. Individualized issues do not predominate over the issues of law and
14 fact that are common to the class as a whole. The principal issues of controversy are whether
15 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
16 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
17 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
18 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for
19 work performed as non-exempt employees for Defendant. These issues are suitable for common
20 adjudication because all Class Members were subject to the same employment policies and
21 Plaintiff contends the practices applied uniformly to all Class Members.

22 g. Superiority. Class resolution is superior to other available methods for the fair and
23 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
24 individually control the prosecution of separate actions. Although the injury resulting from
25 Defendant's policies and practices are real and significant, the cost of individually litigating each
26 such case against Defendant would easily exceed the value of any relief that could be obtained by
27 any one Class Member individually. If Class Members are forced to litigate their claims
28 individually, this would result in about 278 individual actions against Defendant. Here, the

1 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
2 individual suit would prove uneconomical for potential plaintiff because litigation costs would
3 dwarf a potential recovery.

4 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
5 actions by Class Members against Defendant asserting similar claims as here. Furthermore,
6 Stanislaus County is a compelling forum for this action given that Defendant's location is in
7 Stanislaus County and numerous Class Members work in this County.

8 i. There are no serious manageability difficulties presented by preliminarily
9 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
10 that would remain is settlement administration and responding to possible objectors.

11 75. On July 24, 2026 Plaintiff uploaded the Settlement Agreement and the Memorandum
12 of Points and Authorities in Support of Plaintiff's Motion for an Order Preliminarily Approving
13 the Class Action Settlement, Approving Notice of Settlement, and Setting Hearing for Final
14 Approval. A true and correct copy of the confirmatory email from the LWDA is attached hereto
15 as **Exhibit 3**.

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

18 Executed this 24th day of July, at Pasadena, California.

19 

20 Natalie Haritoonian

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Sherry Huntington (“Plaintiff”) and Defendant HM.Clause, Inc., (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

- 1.1 “Action” means Plaintiff’s Class Action and PAGA lawsuit alleging wage and hour violations against Defendant captioned *Huntington v. HM.Clause, Inc.*, initiated on December 18, 2024, and pending in Superior Court of the State of California, County of Stanislaus, Case No. CV-24-010298.
- 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 “Class” means all current and former non-exempt hourly employees who worked for Defendant in California during the Class Period.
- 1.5 “Class Counsel” means Emil Davtyan, David Yeremian, and Natalie Haritounian of D.Law, Inc.
- 1.6 “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.
- 1.7 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.8 “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 a PAGA Member).
- 1.9 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.10 “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, if applicable in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.11 “Class Period” means the period from October 16, 2021, through the date the Court grants preliminary approval of the class settlement, subject to the escalator provision in Paragraph 8 below.
- 1.12 “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.13 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14 “Court” means the Superior Court of California, County of Stanislaus.
- 1.15 “Defendant” means named Defendant HM.Clause, Inc.
- 1.16 “Defense Counsel” means Kenneth Zielinski and Noell Rice of Rutan & Tucker, LLP, the attorneys representing Defendant in the Action.
- 1.17 “Effective Date” means the later of (i) the 61st day after service of notice of entry of the Final Approval and Final Judgment, if no appeal, review, or writ has been filed; or (ii) if an appeal, review, or writ is sought from the Final Approval and Final Judgment, the day after the Final Approval and Final Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval and Final Judgment is no longer subject to further judicial review. The Effective Date is conditioned upon the Court’s having entered a Final Approval and Final Judgment as set forth in this Agreement.
- 1.18 “Employer Taxes” means the taxes Defendant is obligated by law to pay for any portion of the Individual Class Payments designated as wages.
- 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.
- 1.22 “Funding Date” means fifteen (15) calendar days after the Effective Date and is the date on which Defendant shall fund the Gross Settlement Amount and Employer Taxes to the Administrator.

- 1.23 “Gross Settlement Amount” means \$538,335.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3 below. 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.
- 1.24 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount allocated to Individual Class Payments and calculated according to the number of Workweeks worked during the Class Period.
- 1.25 “Individual PAGA Payment” means the PAGA Member’s pro rata share of 35% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 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: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “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 “PAGA Pay Period” means any Pay Period during which a PAGA Member worked for Defendant for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from December 18, 2023, to the date the Court grants preliminary approval of the class settlement, subject to the escalator provision in Paragraph 8 below.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33 “PAGA Member” means all current and former non-exempt hourly employees who worked for Defendant in California during the PAGA Period.
- 1.34 “PAGA Notices” means Plaintiff’s December 18, 2024, and October 16, 2025 letters to Defendant 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, allocated 35% to the PAGA Members (\$17,500.00) and the 65% to LWDA (\$32,500.00) in settlement of PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiff” means Sherry Huntington, the named plaintiff in the Action.
- 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 of the Settlement.
- 1.40 “Released Class Claims” means, for the duration of the Class Period, any and all claims, known or unknown, contingent or accrued, that have been, or could have reasonably been, alleged in the Operative Complaint and asserted against the Released Parties that arise from the facts, matters, transactions or occurrences alleged in the Action. Without limiting, the foregoing, and in addition to the foregoing, Released Class Claims include claims premised on: (i) the failure to: pay all wages owed for all hours worked and at the correct rate, including minimum, overtime, and double time wages; provide legally required meal periods or pay premiums at the correct regular rate; provide legally required rest breaks or pay premiums at the correct regular rate; timely pay wages during employment; timely pay wages at termination including vacation; provide accurate wage statements; keep complete and accurate payroll records; reimburse necessary business expenses; provide paid sick leave and/or pay paid sick leave at the correct rate; provide suitable seating; provide a day of rest; maintain a reasonable temperature in each work area; (ii) violations of: California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226, 226.7, 227.3, 246, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and (iii) related violations of the applicable California Wage Orders; all related or corresponding federal laws; and California Business and Professions Code section 17200, et seq in connection with the alleged Labor Code violations alleged (or that could be alleged based on the facts pled) in the Action.
- 1.41 “Released PAGA Claims” means, for the duration of the PAGA Period, all claims to penalties under California Labor Code section 2698 that (a) arise from the facts, matters, transactions or occurrences alleged in the Action or that could have been alleged in the Action based on such facts; and/or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the PAGA Notices. Without limiting, the foregoing, and in addition to the foregoing, Released PAGA Claims include claims for civil penalties under California Labor Code Section 2698 premised on the failure to: pay all wages owed for all hours worked and at the correct rate, including minimum, overtime, and double time wages; provide legally required meal periods or pay premiums at the correct regular rate; provide legally required rest breaks or pay premiums at the correct regular rate; timely pay wages during employment; timely pay wages at termination

including vacation; provide accurate wage statements; keep complete and accurate payroll records; reimburse necessary business expenses; provide paid sick leave and/or pay paid sick leave at the correct rate; provide suitable seating; provide a day of rest; maintain a reasonable temperature in each work area, pursuant to the corresponding alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, et seq., 2802, 2926, 2927, and the applicable IWC Wage Orders.

1.42 “Released Parties” means: Defendant and their current and former parents, predecessors or successors, holding companies, affiliated companies, entities, owners, shareholders, members, partners, officers, directors, managers, employees, insurers and agents.

1.43 “Request for Exclusion” means a Class Member’s submission of a signed written request to be excluded from the class settlement. A valid Request for Exclusion must: (i) contain the Class Member’s full name, current address, and signature; (ii) the Action name and case number; (iii) a written request clearly expressing the Class Member’s desire to be excluded from (or opt out of) the class settlement; and (iv) be returned so that it is postmarked on or before the Response Deadline.

1.44 “Response Deadline” means 60 days after the Administrator mails the Class Notice to Class Members and PAGA 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 notice packets 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 worked for Defendant for at least one day during the Class Period.

2. **RECITALS.**

2.1 On December 18, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failing to pay minimum wages, overtime wages, failing to provide meal periods, failing to provide rest periods, failing to provide accurate itemized wage statements, failing to timely provide wages including wages due upon termination, failing to maintain accurate records, failing to reimburse expenses, and violation of Business & Professions Code §17200 et seq. On February 21, 2025, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for civil penalties under PAGA. On October 16, 2025, Plaintiff filed a Second Amended Complaint to add a cause of action for failing to provide one day’s rest in seven and failing to pay sick leave at the correct rate. The Second Amended Complaint is the Operative Complaint in

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

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

2.3 On May 27, 2025, the Parties participated in an all-day mediation presided over by Lonnie Giamela, which led to this Agreement to settle the Action.

2.4 Prior to mediation, Plaintiff obtained, through informal discovery, 100% timekeeping and pay data for the Class Period, sample wage statements, meal break waivers, and all applicable policies pertaining to reimbursements, meal and rest breaks, personal protective equipment, timekeeping and overtime. 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”).

2.5 The Court has not granted class certification.

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

3. **MONETARY TERMS.**

3.1 **Gross Settlement Amount.** Except as otherwise provided by Paragraph 8 below, Defendant promises to pay \$538,335.00 and no more as the Gross Settlement Amount and to separately pay the Employer Taxes. Defendant has no obligation to pay the Gross Settlement Amount or Employer 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 Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff’s request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class 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 in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$179,445.00, and a Class Counsel Litigation Expenses Payment for reimbursement of actual and reasonable costs incurred not to exceed \$25,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class 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 Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$7,300.00 except for a showing of good cause and as approved by the Court.
- 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. To the extent Non-Participating Class Members are PAGA Members, the Non-Participating Class Members will still receive an Individual PAGA Payment.

3.2.5 To the LWDA and PAGA Members: PAGA Penalties in the amount of \$50,000.00 to be paid from the Gross Settlement Amount, with 65% (\$32,500.00) allocated to the LWDA PAGA Payment and 35% (\$17,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Members' 35% share of PAGA Penalties (\$17,500.00) by the total number of Workweeks worked by all PAGA Members during the PAGA Period and (b) multiplying the result by each PAGA Member's Workweeks worked during the PAGA Period.

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. PAGA Members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.6 Additional Attorneys' Fees and Costs: No Class Member, PAGA Member, Class Counsel, or any other attorney acting for any Class Member may recover or seek to recover any amounts for fees, costs, or disbursements arising from the Action or the Gross Settlement Amount from the Released Parties except as expressly provided for in this Agreement.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and PAGA Member Pay Periods. Based on a review of its records and in preparation for mediation, as of the date of mediation, May 27, 2025, Defendant estimates there are 278 Class Members who collectively worked a total of 24,000 Workweeks from October 16, 2021, through May 27, 2025, and 184 PAGA Members who worked a total of 3,870 PAGA Pay Periods from December 18, 2023, through May 27, 2025.

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

This means the Class Data may only be provided to Class Counsel upon request with names, Social Security Numbers, address information, or any other Class Member contact information redacted, and Class Counsel agrees to use such information only for the purposes described in this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and the Employer Taxes by transmitting the funds to the Administrator on or before the Funding Date.

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

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided (the “Void Date”). The Administrator will cancel all checks not cashed by the Void Date. The Administrator will send checks for Individual Class 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 Members including Non-Participating Class Members who qualify as PAGA Members (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 Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 4.5 Payments to the Responsible Tax Authorities. The Administrator will pay the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Class Payment. The Administrator shall also pay Defendant's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) to the appropriate local, state, and federal taxing authorities. The Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities.
5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and Employer Taxes, Plaintiff and Class Members will release claims against all Released Parties as follows:
- 5.1 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 all Released Parties from the Released Class Claims.
- 5.2 Release by PAGA Members and the State of California: All PAGA Members and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, all Released Parties from the Released PAGA Claims. The Parties agree there is no statutory right for any PAGA Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Member to appeal the approval of the PAGA settlement by the Court. This Agreement shall not be subject to collateral attack by any PAGA Member.
6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly 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 and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes

an analysis of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)), which Class Counsel will submit to Defense Counsel for review and comment at least seven (7) days prior to filing with the Court; (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement, which Class Counsel will submit to Defense Counsel for review and comment at least seven (7) days prior to filing with the Court; (iii) a draft proposed Class Notice, which Class Counsel will submit to Defense Counsel for review and comment at least seven (7) days prior to filing with the Court; (iv) 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; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a signed declaration from 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 (vi) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff’s and Class Counsel’s Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of Class Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval of this Settlement no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

6.3 Conditional Nature Of Settlement. For settlement purposes only, the Parties agree that (a) a class may be certified in the Action pursuant to California Code of Civil Procedure section 382, and (b) the Action may proceed as a PAGA representative action.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns. Should the Court decline to approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it.

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 state and federal tax authorities.

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

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

7.5 Notice to Class Members.

7.5.1 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, and Workweeks in the Class Period and PAGA Period in the Class Data.

7.5.2 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 with Spanish translation, if applicable substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks during the Class Period and PAGA Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.5.3 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.

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

7.6 Requests for Exclusion (Opt-Outs).

- 7.6.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a Request for Exclusion, as stated in Paragraph 1.43 of this Agreement, 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). To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.6.2 If the Settlement Administrator receives a timely Request for Exclusion that is incomplete, it will make reasonable attempts to contact the Class Member to cure the defect. The Settlement Administrator will not consider any Request for Exclusion postmarked after the Response Deadline, but will report its receipt of any such requests to Class Counsel and Defendant's counsel. It shall be presumed that if a Request for Exclusion is not postmarked on or before the Response Deadline, the Class Member did not make the request in a timely manner. A declaration submitted by any Class Member attesting to the mailing of a Request for Exclusion on or before the Response Deadline shall be insufficient to overcome the conclusive presumption that the Request for Exclusion was untimely. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit a Request for Exclusion of the settlement without the Parties' joint written consent.
- 7.6.3 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 1.40, 5.1 and 5.2 of this

Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.6.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Members are deemed to release the claims identified in Paragraph 1.41 and 5.2 of this Agreement and are eligible for an Individual PAGA Payment.

7.6.5 If 5% or more Class Members timely submit a Request for Exclusion of the settlement, Defendant will have the sole and absolute discretion to withdraw from this Agreement within ten (10) calendar days after Defendant receives notice of the number of Requests for Exclusion. Defendant will provide written notice to Class Counsel if it intends to withdraw from this Agreement. In the event that Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement, and the Agreement shall become null and void and have no further force or effect, and the class certified pursuant to this Agreement will be decertified for all purposes. If Defendant chooses to terminate this Settlement Agreement under this provision, it shall be responsible for paying the Administrator's fees and costs. If the Settlement Agreement is terminated for any other reason, including the Court's failure to grant final approval of the Parties' settlement, then Class Counsel and Defendant will be jointly responsible for the Administrator's fees and costs.

7.7 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 Workweeks allocated to the Class Member in the Class Notice (a "Challenge to Workweeks"). The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. Prior to the Administrator making a determination of the correct number of Workweeks, the Administrator shall provide Defense Counsel a copy of any Challenges to Workweeks along with any supporting documentation and five (5) days to respond to any Challenge to Workweeks. The Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.8 Objections to Settlement.

- 7.8.1 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.
- 7.8.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- 7.8.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.9 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.

- 7.9.1 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.
- 7.9.2 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).
- 7.9.3 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 provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. With the exception of the Requests for Exclusion, the Weekly Reports will not contain any Class Member names, Social Security Numbers, addresses, or other employee contact information.

- 7.9.4 Workweek 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 during the Class Period and PAGA Period. Prior to the Administrator making a determination of the correct number of Workweeks, the Administrator shall provide Defense Counsel a copy of any Challenges to Workweeks along with any supporting documentation and five (5) days to respond to any Challenge to Workweeks. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.9.5 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.
- 7.9.6 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, including the disbursement of uncashed checks as set forth in Paragraph 4.4.3. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records, Defendant represented that there are 278 Class Members who collectively worked 24,000 Workweeks during the period of October 16, 2021, through May 27, 2025. If the total number of Workweeks during the Class Period increases by more than 10% as of the date of preliminary approval of the Settlement, then Defendant will have the choice of: (a) paying a proportional increase in the Gross Settlement Amount for each additional workweek over 26,400 (e.g., if

the number of Workweeks increases by 11%, the Gross Settlement Amount will increase by 1%); or (b) only paying a proportional increase in the PAGA Penalties for each additional Workweek over 26,400, which will be added to the Gross Settlement Amount, and modifying the end date of the Class Period to be the date immediately before the escalator clause is triggered (i.e., before the date the total number of Workweeks exceeds 26,400); or (c) modifying the end date of the Class Period and PAGA Period to the date immediately before the escalator clause is triggered (i.e., before the date the total number of Workweeks exceeds 26,400). If the Gross Settlement amount is increased pursuant to this escalator clause, the Class Counsel Fees Payment shall correspondingly increase to remain one-third of the increased Gross Settlement Amount.

9. **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. (s), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 9.1 **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.

- 9.2 **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.

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

- 9.4 **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.

9.5 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.

10. **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 a proposed amended judgment.

11. **ADDITIONAL PROVISIONS.**

11.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and 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).

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

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

- 11.3 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.
- 11.4 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.
- 11.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 11.6 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.
- 11.7 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 any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 11.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 11.9 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.
- 11.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.
- 11.11 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.
- 11.12 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.
- 11.13 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.
- 11.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data. Plaintiff must provide written notice to Defendant of compliance with these obligations within that same time period.
- 11.15 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.
- 11.16 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.

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

To Plaintiff:

D.Law, Inc.
Emil Davtyan
emil@d.law
David Yeremian
d.yeremian@d.law
Natalie Haritounian
n.haritounian@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465

To Defendant:

Rutan & Tucker, LLP
Kenneth J. Zielinski
kzielinski@rutan.com
Noell Rice
nrice@rutan.com
18575 Jamboree Road 9th Floor
Irvine, CA 92612
Telephone: (714) 641-5100

- 11.18 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.
- 11.19 No Collateral Attack. This Agreement will not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Final Approval and Judgment. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of their Individual Class Payment or Individual PAGA Payment, or for opting out of the Settlement.
- 11.20 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, upon the signing of this Agreement and 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.

SIGNATURES

I have read this Agreement and agree to its terms.

DATED: 01/30/2026, 2026

SHERRY HUNTINGTON ("Plaintiff")

Signed by:



By: Sherry Huntington

DATED: January 13, 2026, 2026

HM.Clause, Inc. ("Defendant")

Signed by:



By: Eugenia Rigaud, CEO

On behalf of Defendant, HM.Clause, Inc.

APPROVED AS TO FORM ONLY:

D.LAW, INC.

Dated: February 10, 2026


Natalie Haritonian
Andrea A. Amaya Silva
Attorneys for Plaintiff Sherry Huntington

RUTAN & TUCKER, LLP

Dated: January 22, 2026


Kenneth Zielinski
Noell Rice
Attorneys for Defendant HM.Clause, Inc.

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

Huntington v. HM.Clause, Inc. et al.

Stanislaus County Superior Court, Case No. CV-24-010298

***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 HM.Clause, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by a former employee, Sherry Huntington (“Plaintiff”), and seeks payment of (1) back wages and other relief for a class of non-exempt hourly employees (“Class Members”) who worked for Defendant during the Class Period (October 16, 2021 through the [date the Court grants preliminary approval of the class settlement]); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt hourly employees who worked for Defendant during the PAGA Period (December 18, 2023 through [the date the Court grants preliminary approval of the class settlement]) (“PAGA Members”).

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

Based on Defendant’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 Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work for Defendant during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

Defendant 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 Defendant 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. Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue certain PAGA claims against Defendant (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks. 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 the PAGA Period, respectively. The number of workweeks you worked during the Class Period and PAGA Period according to Defendant'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 employee of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses, failing to provide meal periods, rest breaks and accurate itemized wage statements, failing to keep complete and accurate payroll records, failing to provide paid sick leave and/or pay paid sick leave at the correct rate; failing to provide suitable seating, provide a day of rest and failing to maintain a reasonable temperature in each work area and claims for violations of California Business and Professions Code § 17200. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA. Plaintiff is represented by attorneys in the Action: Emil Davtyan, David Yeremian, and Natalie Haritounian of D.Law, Inc. (“Class Counsel.”)

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

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

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

In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant 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, Defendant 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) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and PAGA Members. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

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

1. Defendant Will Pay \$538,335.00 as the Gross Settlement Amount. Defendant 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 LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement Amount within fifteen (15) calendar days after the Effective Date of the Settlement. 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 one-third of the Gross Settlement Amount to Class Counsel for attorneys' fees, which is currently estimated to be \$179,445.00, and reimbursement of actual and reasonable costs incurred by Class Counsel, which is currently estimated not to exceed \$25,000.00. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - b. Up to \$10,000.00 as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive in this Action other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - c. Up to \$7,300.00 to the Administrator for services administering the Settlement.
 - d. Up to \$50,000.00 for PAGA Penalties, allocated 65% to the LWDA PAGA Payment and 35% in Individual PAGA Payments to the PAGA Members.

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

3. Net Settlement Amount 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 Amount") 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 Defendant 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. Defendant 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 Defendant 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 fax, email, or mail by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth (i) the Class Member's full name, current address, and signature; (ii) the Action name and case number; and (iii) a written request clearly expressing the Class Member's desire to be excluded from (or opt out of) the class settlement; and be returned so that it is postmarked on or before the Response Deadline. 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 Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement ("Non-Participating Class Members") remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant 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 to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
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, 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 Defendant 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. 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 all Released Parties from the Released Class Claims. Except as set forth in this Paragraph, 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.

"Released Class Claims" means, for the duration of the Class Period, any and all claims, known or unknown, contingent or accrued, that have been, or could have reasonably been, alleged in the Operative Complaint and asserted against the Released Parties that arise from the facts, matters, transactions or occurrences alleged in the Action. Without limiting, the foregoing, and in addition to the foregoing, Released Class Claims include claims premised on: (i) the failure to: pay all wages owed for all hours worked and at the correct rate, including minimum, overtime, and double time wages; provide legally required meal periods or pay premiums at the correct regular rate; provide legally required rest breaks or pay premiums at the correct regular rate; timely pay wages during employment; timely pay wages at termination including vacation; provide accurate wage statements; keep complete and accurate payroll records; reimburse necessary business expenses; provide paid sick leave and/or pay paid sick leave at the correct rate; provide suitable seating; provide a day of rest; maintain a reasonable temperature in each work area; (ii) violations of: California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226, 226.7, 227.3, 246, 510, 512, 551.552, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and (iii) related violations of the applicable California Wage Orders; all related or corresponding federal laws; and California Business and Professions Code section 17200, et seq in connection with the alleged Labor Code violations alleged (or that could be alleged based on the facts pled) in the Action.

"Released Parties" means: Defendant and their current and former parents, predecessors or successors, holding companies, affiliated companies, entities, owners, shareholders, members, partners, officers, directors, managers, employees, insurers and agents.

10. PAGA Members' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement Amount (and separately paid the employer-side payroll taxes), all PAGA Members will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. PAGA Members will be bound by the following release:

All PAGA Members and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, all Released Parties from the Released PAGA Claims. The Parties agree there is no statutory right for any PAGA Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Member to appeal the approval of the PAGA settlement by the Court. This Agreement shall not be subject to collateral attack by any PAGA Member.

“Released PAGA Claims” means, for the duration of the PAGA Period, all claims to penalties under California Labor Code section 2698 that (a) arise from the facts, matters, transactions or occurrences alleged in the Action or that could have been alleged in the Action based on such facts; and/or (b) arise from the facts, matters, transactions or occurrences alleged, or that could have been alleged, in the PAGA Notices. Without limiting, the foregoing, and in addition to the foregoing, Released PAGA Claims include claims for civil penalties under California Labor Code Section 2698 premised on the failure to: pay all wages owed for all hours worked and at the correct rate, including minimum, overtime, and double time wages; provide legally required meal periods or pay premiums at the correct regular rate; provide legally required rest breaks or pay premiums at the correct regular rate; timely pay wages during employment; timely pay wages at termination including vacation; provide accurate wage statements; keep complete and accurate payroll records; reimburse necessary business expenses; provide paid sick leave and/or pay paid sick leave at the correct rate; provide suitable seating; provide a day of rest; maintain a reasonable temperature in each work area, pursuant to the corresponding alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 246, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, et seq., 2802, 2926, 2927, and the applicable IWC Wage Orders.

11. Effective Date of the Settlement. The “Effective Date” is the later of (i) the 61st day after service of notice of entry of the Final Approval and Final Judgment, if no appeal, review, or writ has been filed; or (ii) if an appeal, review, or writ is sought from the Final Approval and Final Judgment, the day after the Final Approval and Final Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval and Final Judgment is no longer subject to further judicial review. The Effective Date is conditioned upon the Court’s having entered a Final Approval and Final Judgment as set forth in this Agreement.

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 \$17,500.00 by the total number of Workweeks worked by all PAGA Members during the PAGA Period and (b) multiplying the result by the number of Workweeks worked by each individual PAGA Member during the PAGA Period.
3. Workweek Challenges. The number of Workweeks you worked during the Class Period and the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant'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 Members. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every PAGA Member 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 setting forth (i) the Class Member's full name, current address, and signature; (ii) the Action name and case number; and (iii) a written request clearly expressing the Class Member's desire to be excluded from (or opt out of) the class 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 *Sherry Michelle Huntington v. HM.Clause, Inc., et al.*, Case No. CV-24-010298. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

If you opt out of the Class Settlement by submitting a timely Request for Exclusion and are a PAGA Member, you will still receive your Individual PAGA Payment and be bound by the PAGA Release.

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 Defendant are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff 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 *Sherry Michelle Huntington v. HM.Clause, Inc., et al.*, Case No. CV-24-010298 and include your name, current address, telephone number or email address, 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 23 of the Stanislaus Superior Court, located at 801 10th St 4th Floor 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. 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 Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://stanportal.stanct.org/search>) and entering the Case Number for the Action, Case No. CV-24-010298. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanislaus Courthouse by calling (209) 525-5250.

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

Class Counsel:

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Emil Davtyan
emil@d.law
David Yeremian
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Natalie Haritoonian
n.haritoonian@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465

Settlement Administrator:

Name of Company: APEX Class Action Administration
Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Division at (800) 992-4647; mail at P.O. Box 942850, Sacramento, CA 94250; in-person 10600 White Rock Road, Suite 141, Rancho Cordova, CA 95670 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

December 18, 2024

VIA ON-LINE SUBMISSION ONLY TO:

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

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

HM.CLAUSE, INC.
260 Cousteau Place Suite 210
Davis, CA 95618
Certified Mail Tracking Number: 9414 8112 0620 6807 9542 94

HM.CLAUSE, INC.
CSC – Lawyers Incorporating Service
2710 Gateway Oaks Dr. Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 9414 8112 0620 6807 9521 08

LWDA No.: LWDA-CM-1068155-24

Re: Labor Code § 2698, et seq. Penalties – PAGA Notice Letter to the LWDA
Huntington v. HM.Clause, Inc., et al.
Superior Court for the County of Stanislaus

Gentlepersons:

This office represents Plaintiff SHERRY MICHELLE HUNTINGTON (“Plaintiff”) and other similarly situated aggrieved non-exempt, hourly employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, et seq., 2802, 2926, 2927 and 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 herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendant HM.CLAUSE, INC., a California Corporation (“Defendant HM”); and DOES 1 through 50 inclusive (collectively “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 subjects Defendants to civil and statutory penalties under the Act.

Relevant Facts

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

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

During the course of Aggrieved Employees' employment with Defendants, Aggrieved Employees were not paid all wages they were owed, including for all work performed resulting in off the clock work. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Plaintiff was required to undergo a series of COVID-19 screenings such as temperature checks, a symptom checklist, testing and vaccination while she was off the clock. Additionally, Plaintiff was often required to clean up spills prior to clocking in. Upon information and belief, Aggrieved Employees were also required to perform similar off the clock work. Additionally, Aggrieved Employees were also required to wait in line for a time clock to become available to clock in for their scheduled shift. Furthermore, Aggrieved Employees were required to work through portions of their meal periods while they were off the clock and were not paid for this time. Defendants also contacted



Aggrieved Employees on their personal cell phones with work demands outside of scheduled work hours. Aggrieved Employees were not paid for this time.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendants failed to incorporate non-discretionary and/or performance-based bonuses into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary and/or performance-based bonuses to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay for overtime compensation, sick pay, and meal and rest break premiums.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and the failure to incorporate non-discretionary bonuses into the regular rate of pay, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

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

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks, and this resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break. Additionally, to the extent Aggrieved Employees were permitted to take meal periods, they were required to carry walkie-talkies and respond to work demands.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay,



for each meal period or rest break that Defendants failed to provide or deficiently provided.

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

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour’s wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Additionally, to the extent Aggrieved Employees were permitted to take rest periods, they were required to carry walkie-talkies and respond to work demands.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Further, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants under-reported the actual hours worked by Aggrieved Employees due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Plaintiff and Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked by requiring off the clock work and failed to incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate of pay used to calculate and pay for overtime compensation, sick pay, and meal and rest break premiums. Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants’ failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing her required job duties for Defendants including for cell phone, and internet expenses and the



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

Further, the facilities where Defendants required Aggrieved Employees to work were intolerably hot, and Plaintiff, and upon information and belief, the Aggrieved Employees, were concerned that they would suffer from heat-related injuries during their work shifts. The warehouse where Plaintiff and Aggrieved Employees were required to work did not have air conditioning nor proper air ventilation. By failing to maintain temperatures providing reasonable comfort levels consistent with industry-wide standards for the nature and process of the work performed, Defendants violated paragraph 15 of the applicable IWC Wage Orders and are entitled to civil penalties as appropriate.

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

PAGA Claim Details, Legal Bases for Violations and Penalties:

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

Failure to Pay Minimum Wages

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

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



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

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

During the course of Aggrieved Employees’ employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work, and failed to incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate of pay used to calculate and pay for overtime compensation, sick pay, and meal and rest break premiums. Aggrieved Employees were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants’ control. For instance, Plaintiff was required to undergo a series of COVID-19 screenings such as temperature checks, a symptom checklist, and testing and vaccination while she was off the clock. Additionally, Plaintiff was often required to clean up spills prior to clocking in. Upon information and belief, Aggrieved Employees were also required to perform similar off the clock work. Additionally, Aggrieved Employees were also required to wait in line for a time clock to become available to clock in for their scheduled shift. Aggrieved Employees were required to respond to work demands on their personal cell phones outside of scheduled work hours, and they were not paid for this time.

During the relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the Aggrieved Employees, including by requiring systematic off the clock work. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum wage pay.

In light of the foregoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a).



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

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

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

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly required Aggrieved Employees to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits.

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

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of eight hours or twelve hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that



Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated Aggrieved Employees to work through meal periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

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

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

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

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

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



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

Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policies and procedures required Aggrieved Employees to remain under Defendants' control during breaks to respond to job requirements. Additionally, to the extent Aggrieved Employees were permitted to take rest periods, they were required to carry walkie-talkies and respond to work demands.

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

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

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

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

Defendants failed to provide accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Any wage statements given to Employees by Defendants necessarily failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours



worked or at the correct rate of pay and for providing deficient meal periods and rest breaks, and failing to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay for overtime pay, sick pay, and meal and rest break premiums, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(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 she worked after eight hours into a shift or over forty in a work week and that she 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, 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 employees and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, 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 foregoing, 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 foregoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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

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

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

Defendants systematically and uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Maintain Temperatures Under the Wage Orders



Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding the temperatures maintained at employers’ facilities within California: “(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort... (C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.” (*See, e.g.*, Cal. Code Regs., tit. 8 § 11070(15), Cal. Code Regs., tit. 8, § 11090(15)).

Further California Labor Code § 6720 required the California Division of Occupational Safety and Health (“Cal/OSHA”) to propose an indoor heat illness standard by January 1, 2019. Cal/OSHA’s draft standard applies its proposed regulations to all indoor work areas where the temperature equals or exceeds 82° Fahrenheit when employees are present. At times during the relevant time period, Plaintiff and Aggrieved Employees were subjected to excessive heat resulting in temperatures equaling or exceeding 82° F. During the relevant time period, as detailed above, Defendants violated Labor Code §§ 1198 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiff and Aggrieved Employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by, *inter alia*, providing adequate air conditioning or ventilation etc.

These practices and policies resulted in Defendants’ failure to maintain temperature providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders. Plaintiff and the Aggrieved Employees may therefore pursue damages and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in an amount to be determined at trial. More specifically, for the above addressed violations of paragraph 15 of the applicable IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5, Plaintiff seeks penalties available and applicable under Labor Code § 2699(f)(2) and paragraphs 14 and 20 of the applicable IWC Wage Orders, and also attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Provide Suitable Seating

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



employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

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

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

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

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

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

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

Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 221, 226, 226(b), 226.3, 226.7, 227.3, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1198.5, 1199, 2698, 2699, *et seq.* 2802, 2926, and 2927, 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 Maintain Temperatures: For failure to maintain temperatures providing reasonable comfort constituting violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable IWC Wage Orders, 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);



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

We have been constrained to initially move forward with the filing of 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 Defendant HM.CLAUSE, INC., 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.

A handwritten signature in blue ink, appearing to read 'David Yeremian', written over the printed name.

David Yeremian

Cc: HM.CLAUSE, INC. by Certified Mail

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Attorneys for Plaintiff SHERRY MICHELLE HUNTINGTON
on behalf of herself and others similarly situated

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

SHERRY MICHELLE HUNTINGTON, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

HM.CLAUSE, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CLASS ACTION

CLASS ACTION COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff SHERRY MICHELLE HUNTINGTON (“Plaintiff”) brings this action on behalf of herself and the Class Members who are defined as “all current and former employees within the State of California who, at any time from four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees by Defendant HM.CLAUSE, INC., a California Corporation (“Defendant HM”); and/or DOES 1 through 50, inclusive” (all Defendants being collectively referred to herein as “Defendants”).

2. 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 the California Business & Professions Code, and seeks redress for these violations.

3. 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 Class Members who served in similar and related positions.

THE PARTIES

A. The Plaintiff

4. Plaintiff SHERRY MICHELLE HUNTINGTON resides in California, during the time period relevant to this Complaint, and was employed by Defendants as a non-exempt hourly employee within the State of California.

B. The Defendants

5. Defendant HM is a California Corporation with its principal place of business in Davis, California and is registered with the California Secretary of State. Defendant HM has been the employer listed on the wage statements and employment records issued to Plaintiff during the relevant time period that Plaintiff was employed with Defendants. Defendant HM employs Plaintiff and the Class Members in California, including at Defendants’ offices and facilities in Stanislaus, California, and throughout California, and conducts business throughout California.

6. 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.

7. 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 Class Members. Defendants, and each of them, exercised control over the wages, hours or working conditions of Class Members, or suffered or permitted Class Members to work, or engaged, thereby creating a common law employment relationship, with Class Members. Therefore, Defendants, and each of them, employed or jointly employed Class Members.

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

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

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

FACTUAL BACKGROUND

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

12. During the course of Class Members' employment with Defendants, Class Members were not paid all wages they were owed. Class Members were required to perform pre-shift and post-shift off the clock work which they were not compensated for despite being subject to Defendants' control. Specifically, Plaintiff was required to undergo a series of COVID-19 screenings such as temperature checks, a symptom checklist, and testing and vaccination while she was off the clock. Additionally, Plaintiff was often required to clean up spills prior to clocking in. Upon information and belief, Class Members were also required to perform similar off the clock work. Additionally, Class Members were also required to wait in line for a time clock to become available to clock in for their scheduled shift. Furthermore, Class Members were required to work through portions of their meal periods while they were off the clock and were not paid for this time. Defendants also contacted Class Members on their personal cell phones with work demands outside of scheduled work hours, and Class Members were not paid for this time.

13. Defendants also failed to pay Class Members all wages due and owing because Defendants failed to incorporate non-discretionary and/or performance-based bonuses into the regular rate of pay. Contrary to the requirements of the Labor Code and IWC Wage Orders under

1 California law, Defendants did not incorporate these non-discretionary and/or performance-based
2 bonuses to the Class Members into the regular rate of pay Defendants used to calculate and pay for
3 overtime compensation, sick pay, and meal and rest break premiums.

4 14. By implementing policies, programs, practices, procedures and protocols which
5 resulted in off the clock work, the failure to incorporate non-discretionary bonuses and/or
6 performance-based bonuses into the regular rate of pay used to calculate and pay overtime
7 compensation, sick pay, and meal and rest break premiums, Defendants' willful actions resulted in
8 the systematic underpayment of wages to Class Members, including underpayment of overtime pay
9 to Class Members over the relevant time period. For example, the above described off the clock
10 work caused Plaintiff and Class Members to begin receiving overtime pay later than they should
11 have.

12 15. As a result of the above-described requirements to work off the clock, the failure to
13 incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate of
14 pay, and the other wage violations they endured at Defendants' hands, and the other wage violations
15 they endured at Defendants' hands, Class Members were not properly paid all wages earned and all
16 wages owed to them by Defendants, including when working more than eight (8) hours in any given
17 day and/or more than forty (40) hours in any given week.

18 16. As a result of Defendants' unlawful policies and practices, Class Members incurred
19 overtime hours worked for which they were not adequately and completely compensated, in addition
20 to the hours they were required to work off the clock. To the extent applicable, Defendants also
21 failed to pay Class Members at an overtime rate of 1.5 times the regular rate for the first eight hours
22 of the seventh consecutive work day in a week and overtime payments at the rate of 2 times the
23 regular rate for hours worked over eight (8) on the seventh consecutive work day, as required under
24 the Labor Code and applicable IWC Wage Orders.

25 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and continuing
26 to the present, Defendants had a consistent policy or practice of failing to pay Class Members for
27 all hours worked, and failing to pay minimum wages for all time worked, as required by California
28 law. Defendants thus failed to pay Class Members at least minimum wages for all the time they

1 worked for Defendants in violation of the Labor Code and applicable IWC Wage Orders as the
2 actual times when Class Members were under the control and direction of Defendants was under
3 reported in the hours reflected on the timekeeping records. Furthermore, Defendants' willful actions
4 resulted in the systematic underpayment of wages to Class Members, including underpayment of
5 overtime pay to Class Members over a period of time.

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

14 19. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
15 meal periods and all the legally required paid, off-duty rest periods to Class Members, as required
16 by the applicable Wage Order and Labor Code. Class Members were required to perform work as
17 ordered by Defendants for more than five (5) hours during a shift but were often required to do so
18 without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants
19 also required Class Members to respond to work demands. Defendants placed their needs over Class
20 Members lawful meal and rest breaks, and this resulted in Class Members often having to work
21 through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the
22 demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off
23 duty meal and/or rest break. Additionally, to the extent Class Members were permitted to take meal
24 periods, they were required to carry walkie-talkies and respond to work demands.

25 20. On the occasions when Class Members worked over 10 hours in a shift, Defendants
26 also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a
27 result, Defendants' failure to provide Class Members with all legally required off-duty, unpaid meal
28 periods and all the legally required off-duty, paid rest periods is and will be evidenced by

Defendants' business records, or lack thereof. Defendants also failed to pay Class Members "premium pay," i.e. one hour of wages at each Class Member's effective hourly rate of pay, for each meal period or rest break that Defendants failed to provide or deficiently provided.

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

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

- (a) Class Members were not provided full thirty-minute duty free meal periods for work days in excess of five (5) hours and were not compensated one (1) hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage Order(s);
- (b) Class Members were not provided second full thirty-minute duty free meal periods for work days in excess of ten (10) hours;
- (c) Class Members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five (5) hours of continuous work during a shift; and
- (e) Class Members were restricted in their ability to take a full thirty-minute meal period.

23. Class Members were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks and were not provided with one (1) hour's wages in lieu thereof. Class Members were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods.

1 Therefore, from at least four years prior to the filing of this lawsuit and continuing to the present,
2 Defendants have consistently failed to provide Class Members with paid rest breaks of not less than
3 ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor
4 did Defendant pay Class Members premium pay for each day on which requisite rest breaks were
5 not provided or were deficiently provided. Additionally, to the extent Class Members were permitted
6 to take rest periods, they were required to carry walkie-talkies and respond to work demands.

7 24. Rest period violations therefore arose in one or more of the following manners:

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

17 25. Defendants also consistently failed to issue accurate itemized wage statements as
18 required by Labor Code § 226(a). Specifically, the wage statements given to Class Members failed
19 to incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate of
20 pay used to calculate and pay overtime compensation, sick pay, and meal and rest break premiums.
21 Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do
22 not comply with Labor Code § 226(a)(9). Further, the wage statements given to Class Members
23 failed to accurately account for unpaid wages and overtime because Defendants under-reported
24 Class Members' actual hours worked due to the off the clock work. Additionally, the wage
25 statements given to Class Members failed to accurately account for premium pay for deficiently
26 provided meal periods and rest breaks.

27 26. From at least four (4) years prior to filing this lawsuit and continuing to the present,
28 Defendants have thus also had a consistent policy of failing to pay all wages owed to Class Members

1 at the time of their termination or within seventy-two (72) hours of their resignation, as required by
2 California wage-and-hour laws. Specifically, Class Members were not paid all regular and overtime
3 wages because Defendants failed to pay for all hours worked by requiring off the clock work, and
4 failed to incorporate non-discretionary bonuses and/or performance-based bonuses into the regular
5 rate of pay used to calculate and pay for overtime compensation, sick pay, and meal and rest break
6 premiums. Additionally, Defendants failed to pay premium wages owed for unprovided meal
7 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages
8 within the required time was willful within the meaning of Labor Code § 203.

9 27. Additionally, from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants have regularly required Plaintiff to incur business expenses in
11 the course of performing her required job duties for Defendants, including for cell phone, and
12 internet expenses and the purchase of computer equipment. Upon information and belief, Class
13 Members incurred similar costs. These expenses incurred by Plaintiff and Class Members were
14 necessary and required of them in performing their assigned job duties, but Defendants failed to
15 reimburse Plaintiff and Class Members for all such necessary expenditures, thus entitling them to
16 reimbursement according to proof as required under Labor Code § 2802 and the applicable
17 provisions of the IWC Wage Orders.

18 28. In light of the foregoing, Plaintiff and Class Members bring this action pursuant to,
19 *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 227.3, 510, 512, 551,
20 552, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, 2926, 2927
21 and California Code of Regulations, Title 8, section 11000 *et seq.*

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

26 **CLASS ALLEGATIONS**

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

28 a. Subclass 1. Minimum Wages Subclass. All Class Members who were not

1 compensated for all hours worked for Defendants at the applicable minimum wage.

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

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

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

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

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

18 g. Subclass 7: Failure to Timely Pay Wages Twice Monthly Subclass. All Class
19 Members who were subject to Defendants' policy and practice of not timely paying all wages earned
20 when they were due and payable at least twice monthly.

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

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

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

1 unlawful, deceptive, and/or unfair.

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

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

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

18 **A. Numerosity**

19 34. The potential members of the class as defined are so numerous that joinder of all the
20 members of the class is impracticable. While the precise number of class members has not been
21 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
22 time period relevant to this lawsuit, employed hundreds of employees who satisfy the Class
23 definition within the State of California.

24 35. Accounting for employee turnover during the relevant time period increases this
25 number substantially. Plaintiff alleges that Defendants’ employment records will provide
26 information as to the number and location of all Class Members.

27 **B. Commonality**

28 36. There are questions of law and fact common to the Class that predominates over any

1 questions affecting only individual Class Members. These common questions of law and fact
2 include:

- 3 a. Whether Defendants failed to pay Class Members minimum wages;
- 4 b. Whether Defendants failed to pay Class Members wages for all hours worked;
- 5 c. Whether Defendants failed to pay Class Members overtime as required under Labor
6 Code § 510;
- 7 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
8 IWC Wage Orders, by failing to provide Class Members with requisite meal
9 periods or premium pay in lieu thereof;
- 10 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
11 Orders, by failing to authorize and permit Class Members to take requisite rest
12 breaks or provide premium pay in lieu thereof;
- 13 f. Whether Defendants violated Labor Code § 226(a) by providing Class Members
14 with inaccurate wage statements;
- 15 g. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
16 wages and compensation due and owing at the time of termination of employment;
- 17 h. Whether Defendants' conduct was willful;
- 18 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
19 Orders by failing to maintain accurate records of Class Members' earned wages and
20 work periods;
- 21 j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Class
22 Members during the relevant time period for all hours worked, whether regular or
23 overtime;
- 24 k. Whether Defendants violated Labor Code § 204 by failing to timely pay wages;
- 25 l. Whether Defendants violated Labor Code § 2802 by failing to reimburse all
26 necessary business expenses Defendants required them to incur in performing their
27 job duties;
- 28 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

n. Whether Class Members are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*

C. Typicality

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

1 foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to
2 them.

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

10 42. Defendants, as prospective and actual employers of the Class Members, had a
11 special fiduciary duty to disclose to prospective Class Members the true facts surrounding
12 Defendants' pay practices, policies and working conditions imposed upon Class Members as well
13 as the effect of any alleged arbitration agreements that may have been forced upon them. In
14 addition, Defendants knew they possessed special knowledge about pay practices and policies,
15 most notably intentionally refusing to pay for all hours actually worked which should have been
16 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
17 and policies and practices on Class Members.

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

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(Against All Defendants)**

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

1 45. Defendants failed to pay Class Members minimum wages for all hours worked.
2 Defendants had a consistent policy of misstating Class Members' time records and failing to pay
3 Class Members for all hours worked. Class Members would work hours and not receive wages,
4 including as alleged above in connection with off the clock work. Additionally, Defendants failed
5 to incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate
6 of pay used to calculate and pay overtime compensation, sick pay and meal and rest break
7 premiums. Defendants, and each of them, have intentionally and improperly changed, adjusted
8 and/or modified the hours of Class Members, which resulted in off the clock work and
9 underpayment of all wages owed to Class Members over a period of time, while benefiting
10 Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum
11 wages to Class Members, to their detriment. Additionally, Defendants had a consistent policy of
12 failing to pay Class Members for hours worked during alleged meal and rest periods for which
13 Class Members were consistently denied, as also addressed herein. Defendants' uniform pattern of
14 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
15 whole, as a result of implementing a uniform policy and practice that denied accurate
16 compensation to Class Members as to minimum wage pay.

17 46. In California, employees must be paid at least the then applicable state minimum
18 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
19 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
20 timely pay its employees for all hours worked. Defendants failed to do so.

21 47. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
22 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
23 employees, and the payment of a less wage than the minimum so fixed is unlawful."

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

26 49. The minimum wage provisions of California Labor Code are enforceable by private
27 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
28 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."

50. 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 and no part of this rate may be used as a credit against a minimum wage obligation.

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

52. 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."

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

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

55. Defendants have the ability to pay minimum wages for all time worked and have

1 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
2 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Class Members.

3 56. Wherefore, Class Members are entitled to recover the unpaid minimum wages
4 (including double minimum wages), liquidated damages in an amount equal to the minimum
5 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
6 to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request
7 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
8 assessment of any statutory penalties against Defendants, in a sum as provided by the California
9 Labor Code, including § 558, and/or other applicable statutes.

10 **SECOND CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

15 58. California Labor Code § 1194 provides that "any employee receiving less than the
16 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
17 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
18 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
19 may be maintained directly against the employer in an employee's name without first filing a
20 claim with the Division of Labor Standards and Enforcement.

21 59. By their conduct, as set forth herein, Defendants violated California Labor Code §
22 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Class
23 Members: (a) time and one-half their regular hourly rates for hours worked in excess of eight (8)
24 hours in a workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours
25 worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for
26 hours worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of
27 eight (8) hours on any seventh day of work in a workweek.

28 60. Defendants had a consistent policy of not paying Class Members wages for all

1 hours worked, including by requiring off the clock work, as addressed above. Additionally,
2 Defendants failed to incorporate non-discretionary bonuses and/or performance-based bonuses
3 into the regular rate of pay used to calculate and pay overtime compensation, sick pay and meal
4 and rest break premiums. Defendants, and each of them, have intentionally and improperly
5 rounded, changed, adjusted, and/or modified certain employees' hours, including Plaintiff's, in
6 order to avoid paying Class Members all earned and owed straight time and overtime wages and
7 other benefits, in violation of the California Labor Code, the California Code of Regulations and
8 the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and
9 Enforcement. Defendants have also violated these provisions by requiring Class Members to work
10 through portions of their meal period. Therefore, Class Members were not properly compensated,
11 nor were they paid overtime rates for hours worked in excess of eight hours in a given day, and/or
12 forty hours in a given week. Based on information and belief, Defendants did not make available
13 to Class Members a reasonable protocol for correcting time records when Class Members worked
14 overtime hours or to fix incorrect time entries.

15 61. Defendants' failure to pay Class Members the unpaid balance of regular wages
16 owed and overtime compensation, as required by California law, violates the provisions of Labor
17 Code §§ 510 and 1198, and is therefore unlawful.

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

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

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

10 64. Class Members have been damaged by these violations of California Labor Code
11 §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

12 65. Consequently, pursuant to the California Labor Code, including Labor Code §§
13 204, 510, 558, and 1194, and the applicable IWC Wage Order, paragraph 3(A) and 4(B),
14 Defendants are liable to Class Members for the full amount of all their unpaid wages and overtime
15 compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the
16 assessment of any statutory penalties against Defendants, and each of them, and any additional
17 sums as provided by the Labor Code and/or other statutes.

18 **THIRD CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

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

28 68. Defendants failed to provide Class Members with meal periods as required under

1 the Labor Code. Defendants placed their needs over Class Members lawful meal breaks and this
2 resulted in Class Members consistently having to work through their scheduled meal breaks
3 because the demands of the job would not avail them the opportunity to take a lawfully
4 uninterrupted and off-duty meal break. Furthermore, upon information and belief, on the occasions
5 when Class Members worked more than ten (10) hours in a given shift, they did so without
6 receiving a second uninterrupted thirty (30) minute meal period as required by law. Additionally,
7 to the extent Class Members were permitted to take meal periods, they were required to carry
8 walkie-talkies and respond to work demands.

9 69. Defendants thus failed to provide Class Members with meal periods as required by
10 the Labor Code, including by not providing them with the opportunity to take meal breaks, by
11 providing them late or for less than thirty (30) minutes, or by requiring them to perform work
12 during breaks.

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

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

25 **FOURTH CAUSE OF ACTION**

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

27 **(Against All Defendants)**

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

1 full herein.

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

5 74. Class Members consistently worked consecutive four (4) hour shifts and were
6 generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to
7 authorize and permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC
8 Wage Order, Class Members were entitled to paid rest breaks of not less than ten (10) minutes for
9 each consecutive four (4) hour shift, and Defendants failed to provide Class Members with timely
10 rest breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants
11 placed their needs over Class Members lawful rest breaks, and this resulted in Class Members
12 consistently having to work through their scheduled rest breaks because the demands of the job
13 would not avail them the opportunity to take a lawfully uninterrupted and off-duty rest break.
14 Thus, Class Members were consistently denied of their rest breaks. Additionally, to the extent
15 Class Members were permitted to take rest periods, they were required to carry walkie-talkies and
16 respond to work demands.

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

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

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

28 78. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC

1 Wage Orders, Class Members are entitled to damages in an amount equal to one (1) hour of wages
2 at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
3 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
4 of them, in a sum as provided by the Labor Code and/or other statutes.

5 **FIFTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE § 226(a)**
7 **(Against All Defendants)**

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

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

17 81. Defendants failed to provide Class Members with accurate itemized wage
18 statements in writing, as required by the Labor Code. Specifically, the wage statements given to
19 Class Members failed to incorporate non-discretionary bonuses and/or performance-based bonuses
20 into the regular rate of pay used to calculate and pay overtime compensation, sick pay, and meal
21 and rest break premiums. Thus, the wage statements do not provide accurate hourly rates for
22 overtime and the statements do not comply with Labor Code § 226(a)(9). Further, the wage
23 statements given to Class Members failed to accurately account for unpaid wages and overtime
24 because Defendants under-reported Class Members' actual hours worked due to off the clock
25 work. Additionally, the wage statements given to Class Members failed to accurately account for
26 premium pay for deficiently provided meal periods and rest breaks.

27 82. Throughout the liability period, Defendants intentionally failed to furnish to Class
28 Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages

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

10 83. Class Members suffered injury as a result of Defendants' knowing and intentional
11 failure to provide them with the accurate wage and hour statements as required by law and are
12 presumed to have suffered injury and be entitled to penalties under Labor Code § 226(e), as the
13 Defendants have failed to provide wage statements with accurate and complete information as
14 required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and Class
15 Members cannot promptly and easily determine from the wage statement alone one or more of the
16 following: (i) The amount of the gross wages or net wages paid to the employee during the pay
17 period or any of the other information required to be provided on the itemized wage statement
18 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii) Which deductions the
19 employer made from gross wages to determine the net wages paid to the employee during the pay
20 period, (iii) The name and address of the employer and, (iv) The name of the employee and only
21 the last four digits of his or her social security number or an employee identification number other
22 than a social security number. For purposes of Labor Code § 226(e) "promptly and easily
23 determine" means a reasonable person [i.e. an objective standard] would be able to readily
24 ascertain the information without reference to other documents or information.

25 84. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
26 § 226(a), Class Members suffered injuries, including among other things confusion over whether
27 they received all wages owed to them, the difficulty and expense involved in reconstructing pay
28 records, and forcing them to make mathematical computations to analyze whether the wages paid

1 in fact compensated them correctly for all hours worked.

2 85. Pursuant to Labor Code §§ 226(a) and 226(e) and 1174, and the applicable IWC
3 Wage Order, paragraph 7(B), Class Members are entitled to recover the greater of all actual
4 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
5 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
6 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
7 reasonable attorneys' fees.

8 **SIXTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 203**
10 **(Against All Defendants)**

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

13 87. Numerous Class Members are no longer employed by Defendants; they either quit
14 Defendants' employ or were fired therefrom.

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

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

19 90. Defendants failed to pay Class Members without abatement, all wages as defined
20 by applicable California law. Class Members were not paid all regular and overtime wages
21 because Defendants failed to pay for all hours worked, required off the clock work, and failed to
22 incorporate non-discretionary bonuses and/or performance-based bonuses into the regular rate of
23 pay used to calculate and pay for overtime, sick pay, and meal and rest break premiums.
24 Additionally, Defendants failed to pay premium wages owed for unprovided meal periods and rest
25 periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
26 required time was willful within the meaning of Labor Code § 203.

27 91. Defendants' failure to pay wages, as alleged entitles these Class Members to
28 penalties under Labor Code § 203, which provides that an employee's wages shall continue until

1 paid for up to thirty (30) days from the date they were due.

2 **SEVENTH CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE § 204**
4 **(Against All Defendants)**

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

7 93. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
8 employment are due and payable twice during each calendar month, on days designated in
9 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
10 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
11 during which the labor was performed, and labor performed between the 16th and the last day,
12 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
13 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment of
14 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
15 calendar days following the close of the payroll period.” As detailed above, Defendants
16 maintained a consistently applied policy and practice of not paying all wages earned between the
17 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
18 between the 16th and the last day of the month between the 1st and 10th day of the following month.
19 Defendants similarly failed to pay all wages earned by not more than seven calendar days
20 following the close of the payroll period. These failures all arose from Defendants’ failure to pay
21 for all hours worked, and failing to incorporate non-discretionary bonuses into the regular rate of
22 pay used to calculate and pay for overtime pay, sick pay, and meal and rest break premiums, as
23 detailed above.

24 94. All wages due and owing to Plaintiff and the Class Members, including as required
25 under Labor Code § 510, were therefore not timely paid by Defendants, as addressed in detail
26 above. Additionally, wages required by Labor Code § 1194 and other sections became due and
27 payable to each Class Member in each pay period that he or she was not provided with a meal
28 period or rest period or paid straight or overtime wages or commissions to which he or she was

1 entitled.

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

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

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

18 **AND 1174.5**

19 **(Against All Defendants)**

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

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

26 99. During the course of Plaintiff’s and Class Members’ employment, Defendants
27 consistently failed to maintain accurate time and wage records for Plaintiff and Class Members as
28 required by California Labor Code § 1174 by failing to pay Plaintiff and Class Members proper

1 wages, overtime, and premium pay as discussed above.

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

4 **NINTH CAUSE OF ACTION**

5 **REIMBURSEMENT OF NECESSARY EXPENDITURES UNDER LABOR CODE § 2802**

6 **(Against All Defendants)**

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

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

12 103. Defendants have regularly required Plaintiff to incur business expenses in the course
13 of performing her required job duties for Defendants including for cell phone, and internet expenses
14 and the purchase of computer equipment. Upon information and belief, Class Members incurred
15 similar costs. These expenses incurred by Plaintiff and Class Members were necessary and required
16 of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and
17 Class Members for all such necessary expenditures. Class Members were not reimbursed for those
18 lawful and necessary work related expenses or losses incurred in direct discharge of their job duties
19 during their employment with Defendants and at the direction of the Defendants pursuant to Labor
20 Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

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

24 **TENTH CAUSE OF ACTION**

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

26 **(Against All Defendants)**

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

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

6 107. Plaintiff is a “person” within the meaning of Business & Professions Code
7 § 17204, has suffered an injury, and therefore has standing to bring this cause of action for
8 injunctive relief, restitution, and other appropriate equitable relief.

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

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

25 110. Defendants have violated statutes and public policies. Through the conduct alleged
26 in this Complaint Defendants have acted contrary to these public policies, have violated specific
27 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
28 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,

1 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
2 guaranteed to all employees under the law.

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

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

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

16 114. As a proximate result of the above-mentioned acts of Defendants, Class Members
17 have been damaged, in a sum to be proven at trial.

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

25 **RELIEF REQUESTED**

26 WHEREFORE, Plaintiff prays for the following relief:

- 27 1. For an order certifying this action as a class action;
28 2. For compensatory damages in the amount of the unpaid minimum wages for work

1 performed by Class Members and unpaid overtime compensation from at least four (4) years prior
2 to the filing of this action, as may be proven;

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

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

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

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

14 7. For penalties pursuant to Labor Code § 226(e) for Class Members, as may be
15 proven;

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

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

20 10. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

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

23 12. For restitution for unfair competition pursuant to Business & Professions Code
24 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

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

28 14. For other wages and penalties under the Labor Code as may be proven;

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

6

7 DATED: December 18, 2024

D.LAW, INC.

8

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By: 

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Emil Davtyan

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David Yeremian

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Natalie Haritounian

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Andrea A. Amaya Silva

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Attorneys for Plaintiff SHERRY MICHELLE
HUNTINGTON, and all others similarly
situated

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DEMAND FOR JURY TRIAL

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

DATED: December 18, 2024

D.LAW, INC.

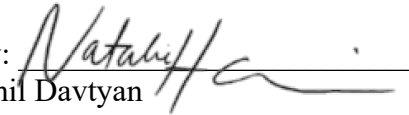
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EXHIBIT 3

[Blank for the purposes of submission to the LWDA, filed copy will include confirmation from this submission]