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on behalf of themselves and others similarly situated

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ARLEN F. ALCANTAR and DAVID
CHIANG, individuals, on behalf of
themselves and others similarly
situated,

Plaintiffs,

v.

KIDANGO, INC., a California
corporation and DOES 1 through 50,
inclusive,

Defendant.

Case No.: 23CV424964

CLASS ACTION

Assigned for All Purposes

To: Hon. Charles F. Adams

Dept.: 7

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

*[filed concurrently with Plaintiffs' Notice of Motion
and Motion; Memorandum of Points and Authorities;
Declaration of Kyle Nordrehaug; Declaration of
Arlen F. Alcantar; Declaration of David Chiang;
Declaration of Mike Sutherland; Declaration of
Bennett Berger; and [Proposed] Order]*

Date: September 4, 2025

Time: 1:30 p.m.

Dept.: 7

Original Complaint Filed: October 30, 2023

First Amended Complaint Filed: January 4, 2024

Second Amended Complaint: March 21, 2025

Trial Date: None Set

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.Law, Inc. and counsel for Plaintiffs Arlen F. Alcantar and David Chiang (hereinafter, “Plaintiffs”), on behalf of themselves and all other similarly situated employees of Defendant Kidango, Inc. (“Defendant”).

2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement (“Motion”). A copy of the Class Action and PAGA Settlement Agreement (“Settlement Agreement”)¹ is attached as **Exhibit 1** hereto, with the Notice of Class and PAGA Action Settlement (“Class Notice”) (attached as **Exhibit A** to the Settlement Agreement).

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3. On October 30, 2023, Plaintiff Arlen F. Alcantar commenced a Class Action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (12) Violation of Business & Professions Code 17200 *et seq.* (the “Action” or “Alcantar Action”).

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1 Arlen F. Alcantar filed a First Amended Complaint adding a cause of action for civil penalties under
2 the PAGA, Labor Code § 2698 *et seq.* On January 5, 2024, Plaintiff David Chiang filed a Class
3 Action complaint entitled *David Chiang v. Kidango, Inc.* in the Alameda County Superior Court of
4 California (Case No. 24CV058779) (“Chiang Class Action”) and alleged the same wage and hour
5 violations as in the Alcantar Action. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff
6 David Chiang gave timely written notice to Defendant and the LWDA by sending his PAGA Notice
7 on January 5, 2024. On March 21, 2024, Plaintiff Chiang filed a separate representative action
8 complaint entitled *David Chiang v. Kidango, Inc.* in the Santa Clara County Superior Court of
9 California (Case No. 24CV433628) (“Chiang PAGA Action”) and alleged one cause of action for
10 civil penalties under PAGA for various wage and hour violations.

11 5. In May 2024, Plaintiffs and their counsel engaged in a Joint Prosecution and Fee and
12 Cost Sharing Agreement (“JPA”) to collectively represent the Plaintiffs in the prosecution and
13 litigation. All Parties subsequently agreed to mediate the Plaintiffs’ Class and PAGA claims. On
14 March 21, 2025, Plaintiffs filed a Second Amended Class Action Complaint in the Alcantar Action
15 adding the parties and claims that were pending in the Chiang Class Action and Chiang PAGA
16 Action (“Operative Complaint”). Subsequently, on April 1, 2025, the Santa Clara County Superior
17 Court of California subsequently granted Plaintiff Chiang’s request to dismiss the separate Chiang
18 PAGA Action without prejudice. On April 8, 2025, the Alameda County Superior Court of
19 California granted Plaintiff Chiang’s request to dismiss the separate Chiang Class Action without
20 prejudice.

21 6. Shortly after the execution of the JPA, the Parties agreed to explore early resolution
22 via mediation and engage in informal discovery prior to mediation.

23 **Plaintiffs’ Claims And Defendant’s Denials**

24 7. Plaintiffs’ claims are based on Defendant’s alleged failure to pay wages (including
25 overtime), failure to provide meal and rest periods, failure to provide sick pay, failure to reimburse
26 business expenses, the resulting failure to pay final wages when required and provide accurate wage
27 statements, and largely derivative claims under the UCL and PAGA.

28 8. Plaintiffs allege Defendant’s policy and practice of requiring systematic off-the-

1 clock work flowed in part from their unlawful timekeeping procedures. Plaintiffs allege that
2 Defendant required timekeeping entries to be manually input into an application on the Class
3 Members' cell phones rather than having Class Members clock in through a time clock or some
4 other method of contemporaneously recording all hours worked. Plaintiffs also allege that Defendant
5 instructed Plaintiffs and Class Members to record their scheduled hours rather than their actual hours
6 worked, which led to Plaintiffs and Class Members not being compensated for all hours worked,
7 including overtime. Plaintiffs further allege that Defendant would modify Plaintiffs' and Class
8 Members' timekeeping entries to reduce their hours worked, or ask Plaintiffs and Class Members
9 to clock out but continue working so they would only be paid based on their scheduled shift hours
10 rather than their actual hours worked. Plaintiffs maintain that Defendant required Plaintiffs and
11 Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled
12 shifts, including supervising students, undergoing COVID-19 screenings before clocking in,
13 answering work-related phone calls and messages, and responding to work emails. Plaintiffs further
14 allege that Defendant implemented an unlawful time-rounding policy and practice, which rounded
15 down and reduced the actual working hours recorded by Plaintiffs and Class Members, resulting in
16 unpaid wages.

17 9. Plaintiffs also allege that Defendant recorded Plaintiffs' and Class Members' time
18 into the timekeeping system to reflect that they took a 30-minute meal period before the fifth hour
19 of work without regard as to whether their meal periods were taken on time, for the full duration, or
20 were interrupted by work requirements. In fact, Plaintiffs allege that Defendant required Plaintiffs
21 and Class Members to routinely work through their meal periods, resulting in them cutting their
22 meal periods short or taking their meal periods late due to their work responsibilities. Plaintiffs
23 further allege that Defendant failed to pay the legally required premium at their regular rate of pay
24 whenever meal periods were missed, interrupted, or late. Plaintiffs similarly allege that Plaintiffs
25 and Class Members were unable to take two or three duty-free rest periods during their work shifts
26 because they were required to respond to work demands throughout the day, and/or Defendant
27 prevented Plaintiffs' and Class Members from leaving the premises. Plaintiffs allege that Defendant
28 failed to pay the legally required premium at their regular rate of pay whenever rest periods were

missed, interrupted, or late.

10. Additionally, Plaintiffs allege that Defendant required Plaintiffs and Class Members to use their cellular phones for work for which they were not reimbursed. Finally, Plaintiffs allege that Defendant failed to provide all required paid sick days and COVID-19 supplemental sick leave to Plaintiffs and Class Members.

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

Investigation

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

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

1 and explore the possibility of settlement.

2 **Settlement Efforts**

3 14. On October 21, 2024, the Parties participated in an all-day mediation with Judge
4 Howard R. Broadman (Ret.), a respected and highly experienced mediator in wage and hour class
5 actions. During mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case,
6 including the risks of litigation, the risks to both Parties, and the law and how it applied to the facts
7 of this case. Following a full day of mediation, the Parties agreed to general settlement terms to
8 resolve the lawsuit. The Parties continued to work together negotiating the long form settlement
9 terms following mediation, as set forth in the Settlement Agreement.

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

23 **Summary of the Settlement**

24 16. Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay
25 \$1,990,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and
26 release all claims asserted by Plaintiffs in the Operative Complaint on behalf of the proposed Class.
27 (Exhibit 1, Settlement Agreement, ¶ 1.22.) The Settlement Agreement defines "Class" as "all
28 individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of

California during the Class Period.” (*Id.* at ¶ 1.5.) The Class Period is the period commencing on October 30, 2019, and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option. (*Id.* at ¶ 1.12.) The “Net Settlement Amount” means the funds available for payments to the Class members on a pro-rata basis, which shall be the amount remaining after the following amounts are deducted from the Gross Settlement Amount: (1) Class Counsel Fees Payment, (2) Class Counsel Litigation Expenses Payment, (3) Administration Expenses Payment, (4) Class Representative Service Payments; and (5) PAGA Penalties to be paid to the LWDA and Aggrieved Employees. (*Id.* at ¶ 1.28.) These amounts are detailed as follows:

- Class Counsel Fees Payment: Up to one-third (1/3) of the Gross Settlement Amount, or **\$663,333.33**, allocated 70% to D.Law Inc. and 30% to Blumenthal Nordrehaug Bhowmik De Blouw LLP (“BNBD”) (Exhibit 1, Settlement Agreement, ¶ 3.2.2.);
- Class Counsel Litigation Expenses Payment: Up to **\$45,000.00** to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (*Id.* at ¶ 3.2.2.);
- Class Representative Service Payments: Up to **\$10,000.00** to each Plaintiff (**\$20,000.00** total) as an award for their services as the Class Representatives (*Id.* at ¶ 3.2.1.);
- Administration Expenses Payment: Up to **\$14,500.00** to the Administrator for its fees and costs to administer the Settlement (*Id.* at ¶ 3.2.3.);
- PAGA Penalties: **\$70,000.00** for settlement of claims for civil penalties under PAGA, with 25% allocated to the Individual PAGA Payments (\$17,500.00) and 75% allocated to the LWDA (\$52,500.00) to be paid to the LWDA (“LWDA PAGA Payment”) (*Id.* at ¶ 3.2.5.)

17. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **\$1,177,166.67**. Each Class Member’s share of the Net Settlement Amount (“Individual Class Payment”) will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Members’ Workweeks. (Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 882 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **\$1,334.66**. If

1 the Court approves a lesser amount for any of the above requested allocations from the Net
2 Settlement Amount, none of the Gross Settlement Amount would revert to Defendant. (*Id.* at ¶ 3.1.)
3 Instead, the remainder will be added to the Net Settlement Amount to be distributed to Participating
4 Class Members. (*Id.*)

5 18. Not later than fourteen (14) days after the Court grants Preliminary Approval of the
6 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
7 of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen
8 (14) days after receiving the Class Data, the Administrator will mail the Class Notice, attached to
9 the Settlement Agreement as Exhibit A, to all Class Members identified in the Class Data via first-
10 class United States Postal Service (“USPS”) mail. (Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The
11 Class Notice includes a summary of the case and settlement terms and provides Class Members with
12 detailed instructions on how to exclude themselves, object to the settlement, and challenge the
13 number of Workweeks and/or Pay Periods attributed to each Class Member per Defendant’s records.
14 (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.) Class Members will have sixty (60)
15 days from the mailing of the Class Notice (plus an additional fourteen (14) days for Class Members
16 whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, or challenge
17 the number of Workweeks and/or Pay Periods (“Response Deadline”).² (Exhibit 1, Settlement
18 Agreement, ¶¶ 1.44, 7.4.4., 7.4.5.)

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

20 19. Plaintiffs alleges that the proposed Class satisfies the criteria for certification of a
21 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
22 Defendant has agreed to the conditional certification of the class for settlement purposes only.
23 Defendant does not concede that certification is appropriate outside of this Settlement and preserves
24 all rights to oppose certification if, for any reason, the settlement does not become effective. In
25 general, courts may take a proposed settlement into account in evaluating the propriety of class
26 certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser
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² Counsel for the Parties have agreed to extend the Response Deadline to 60 days from the mailing of the Class Notice.

1 standard” of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court
2 should take into consideration the fact that the Parties have settled their claims and stipulated to
3 certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

4 20. Numerosity and Ascertainability. The putative Class is so numerous that joinder of
5 all members is impractical. Class Members are all individuals employed as non-exempt, hourly
6 employees by Kidango, Inc. within the State of California during the Class Period, which is the
7 period commencing on October 30, 2019 and continuing through the date of preliminary approval
8 of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option. (Exhibit
9 1, Settlement Agreement, ¶¶ 1.5 and 1.12.) Defendant has identified approximately 882 Class
10 Members based on review of its payroll and personnel records. Thus, there is numerosity and
11 ascertainability.

12 21. Well-Defined Community of Interest. Plaintiffs contend, and Defendant does not
13 dispute for settlement purposes only, that common issues of fact and law predominate as to each of
14 the claims alleged by Plaintiffs, and the Class is united in its proof. This action involves, *inter alia*,
15 a determination about Defendant’s alleged failure to provide meal and rest periods, failure to pay
16 wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure
17 to provide sick pay, failure to reimburse business expenses, the resulting failure to pay final wages
18 when required and failure to provide accurate wage statements; and largely derivative claims under
19 the UCL and PAGA. Plaintiffs contend Defendant’s practices affected Class Members in the same
20 way and present questions that are suitable for common adjudication because all Class Members
21 were subject to the same employment policies and practices. The outcome of litigation in this matter
22 depends upon questions that are common to Class Members.

23 22. Typicality. The class representatives’ claims are typical when they arise from the
24 same event, practice, or course of conduct that gives rise to the claims of other putative Class
25 Members, and if their claims rest on the same legal theories. Here, Plaintiffs allege that their claims
26 are typical of Class Members’ claims because they arose from the same factual basis and are based
27 on the same legal theories. Plaintiffs and Class Members were employed by Defendant during the
28 Class Period and subject to the allegedly unlawful meal and rest policies and pay practices at issue

1 in this litigation. Thus, the typicality requirement is satisfied.

2 23. Adequacy. Plaintiffs' interests are aligned with those of the Class Members, as they
3 have suffered the same injuries as the Class Members and have no conflicts of interest. Plaintiffs
4 have not shrunk from this responsibility. Indeed, Plaintiffs have devoted a substantial amount of
5 time and energy to litigating this Action and effectuating a settlement. Furthermore, as set forth
6 below, Class Counsel are experienced in wage-and-hour litigation, especially class actions, and have
7 zealously represented the interests of the Class in litigating this case and have no conflicts of interest.
8 Accordingly, the adequacy requirement is satisfied.

9 24. Predominance and Superiority. Plaintiffs contend that individualized issues do not
10 predominate over the issues of law and fact that are common to the Class as a whole. As explained,
11 *supra*, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and all Class
12 Members were subjected to the same policies and pay practices during the relevant time period.
13 Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and
14 penalties for work performed as non-exempt employees for Defendant. Plaintiffs allege that these
15 issues are suitable for common adjudication because all Class Members were allegedly subject to
16 the same employment policies, and Plaintiffs contend the practices applied uniformly to all Class
17 Members.

18 25. Plaintiffs contend that class resolution is superior to other available methods for the
19 fair and efficient adjudication of the controversy as there is little interest or incentive for Class
20 Members to individually control the prosecution of separate actions. Although the alleged injury
21 resulting from Defendant's policies and practices are allegedly real and significant, the cost of
22 individually litigating each such case against Defendant would easily exceed the value of any relief
23 that could be obtained by any one Class Member individually. If Class Members are forced to litigate
24 their claims individually, this would result in 882 individual actions against Defendant. Here, the
25 alternative methods of resolution are individual suits for relatively small amounts, each for relatively
26 small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because
27 litigation costs would dwarf a potential recovery.

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1 **C. Strength of Plaintiffs' Case and the Risk, Expense, Complexity and Likely Duration of**
2 **Any Litigation.**

3 29. As stated above, while Plaintiffs and Class Counsel contend the claims asserted in
4 the Action have merit, they also acknowledge the expense and delay of continued litigation.
5 Although the Parties engaged in significant informal discovery in advance of mediation, the Parties
6 still had significant discovery to complete had the matter not settled. This would have required
7 expenditure of substantial time and resources by both Parties that would have very likely spanned
8 several years. Even if Plaintiffs were to certify the class, the Parties would incur considerably more
9 attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. This
10 Settlement avoids those risks and the accompanying expense.

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

12 30. Plaintiffs had not yet filed their motion for class certification, and as such, the extent
13 to which Plaintiffs' proposed class is certifiable is somewhat speculative. Absent a settlement, there
14 was a risk that there would not be a certified class at the time of trial, or if there were, it could consist
15 of a significantly smaller group of employees than the proposed Class resulting in less overall
16 recovery.

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

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

2 32. Class Counsel will be submitting the Settlement Agreement to the LWDA
3 concurrently with the filing of this motion pursuant to Labor Code § 2699(1)(2).

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

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

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

18 Failure to Pay Regular Wages and Overtime:

19 35. Plaintiffs allege that Defendant failed to pay Plaintiff and Class Members at least
20 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
21 eight hours in a day and 40 hours in a week. Plaintiff alleges Defendant's policy and practice of
22 requiring systematic off-the-clock work flowed in part from their unlawful timekeeping procedures.
23 Defendant required timekeeping entries to be manually input into an application on the Class
24 Members' cell phones rather than having Class Members clock in through a time clock or some
25 other method of contemporaneously recording all hours worked. Plaintiffs also allege that Defendant
26 instructed Plaintiffs and Class Members to record their scheduled hours rather than their actual hours
27 worked, which led to Plaintiffs and Class Members not being compensated for all hours worked,
28 including overtime. Plaintiffs further allege that Defendant would modify Plaintiffs' and Class

Members' timekeeping entries to reduce their hours worked, or ask Plaintiffs and Class Members to clock out but continue working so they would only be paid based on their scheduled shift hours rather than their actual hours worked. Plaintiffs maintain that Defendant required Plaintiffs and Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including supervising students, undergoing COVID-19 screenings before clocking in, answering work-related phone calls and messages, and responding to work emails. Plaintiffs further allege that Defendant implemented an unlawful time-rounding policy and practice, which rounded down and reduced the actual working hours recorded by Plaintiffs and Class Members, resulting in unpaid wages.

36. Defendant contends that these claims are not suitable for class treatment given the individualized issues they raise and the manageability difficulties. Defendant also argues it did not require off-the-clock work, any uncompensated overtime work was not authorized, suffered, or permitted by Defendant and was performed without Defendant's knowledge and/or control, and that Plaintiffs were exempt from the overtime wage requirements and other wage and hour requirements under the provisions of the applicable Wage Order of the California Industrial Welfare Commission of the Division of Labor Standards Enforcement and/or the applicable Wage Order was otherwise inapplicable.

37. Plaintiffs' expert estimated Defendant's exposure on the unpaid wages claims to be approximately \$3,330,172.00, calculated as follows: (71,368 off the clock hours (assuming 10 minutes per shift) x \$26.94 average rate of pay (assuming 84.5% of off the clock hours attributable to overtime) plus interest in the amount of \$627,266.00. However, given Defendant's defenses and the potential hurdles facing certification of off-the-clock claims, Class Counsel applied an 80% discount, making for an adjusted realistic exposure of \$666,034.40 for Defendant.

Meal Periods and Rest Breaks:

38. Plaintiffs argue that Defendant had a common practice and policy of denying compliant meal periods. Specifically, Plaintiffs and Class Members were regularly required to work through meal periods, resulting in meal periods taken after the fifth hour of work, and were not provided the opportunity to take full uninterrupted thirty (30) minute meal periods in accordance with California

1 law. Plaintiffs and Class Members were also required to perform various work-related tasks during
2 their unpaid meal periods, resulting in their meal periods being cut short. Plaintiffs further allege
3 that Defendant failed to pay the legally required premium at their regular rate of pay whenever meal
4 periods were missed, interrupted, or late.

5 39. For each meal period missed, of less than 30 minutes, or taken late for which the employee
6 was not provided a reasonable opportunity to take a complete and timely meal period, an employer
7 must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional
8 hour of compensation is referred to as “premium pay.” To comply with these laws, every employer
9 must keep, for each employee, accurate time records showing when the employee begins and ends
10 each work period and takes his or her meal periods. See Wage Order 4-2001(7)(A)(3).

11 40. Defendant contends that Class Members were given a reasonable opportunity to take their
12 meal periods. Defendant further contends that Plaintiffs and Class Members qualified for and agreed
13 to on duty meal breaks, six-hour shifts without meal breaks, and agreed to waive the second meal
14 break where shifts did not exceed twelve hours. Defendant also contends that Plaintiffs’ claims for
15 missed and late meal breaks are barred to the extent they elected not to take them for personal
16 reasons. Defendant also maintains that the meal break claim requires individualized inquiries, which
17 would preclude class certification.

18 41. Plaintiffs’ expert estimated Defendant’s maximum exposure on the meal period claim at
19 approximately \$2,693,416.00 (assuming a 25.8% violation rate net of the meal premiums paid) plus
20 interest in the amount of \$435,725.00 for a total of \$3,129,141.00. However, given Defendant’s
21 contentions, Class Counsel applied a 75% discount, making for an adjusted realistic exposure of
22 \$782,285.25 for Defendant.

23 42. Rest Breaks: The same argument applied to rest breaks. Plaintiffs contend that Defendant
24 did not provide Class Members with timely paid 10-minute rest breaks for every four hours or major
25 fraction thereof. While Defendant made some effort to schedule one ten-minute rest break on some
26 work shifts, Plaintiffs allege it was often untimely and was frequently interrupted by work-related
27 demands. Plaintiffs further allege they were unable to take two duty-free rest periods during their
28 work shifts, or three on the occasions when they worked over ten hours on a shift, because they were

1 required to respond to work demands throughout the day, and/or Defendant prevented Plaintiffs'
2 and Class Members from leaving the premises. Defendant failed to pay the legally required premium
3 at their regular rate of pay whenever rest periods were missed, interrupted, or late.

4 43. Defendant maintains that it provided the reasonable opportunity for Class Members to
5 take duty-free rest breaks. Defendant also contends that Plaintiffs' claims for missed and late rest
6 breaks are barred to the extent they elected not to take them for personal reasons. Defendant also
7 argues that, unlike meal periods, rest breaks need not be recorded. Plaintiffs' expert estimated
8 Defendant's maximum liability exposure on the rest break period claim at approximately
9 \$11,332,298.00 using a 100% violation rate plus interest in the amount of \$1,841,988.00 for a total
10 of \$13,174,285.00. However, given Defendant's contentions and considering a more realistic
11 violation rate for the Class as well as the potential hurdles facing certification of rest break claims,
12 Class Counsel applied a 95% discount making for an adjusted realistic exposure of \$658,714.25 for
13 Defendant. Owing to the arguments above and the fact that the recording of rest periods is not
14 required, this claim was substantially discounted and was not a major driver of exposure in this case.

15 Inaccurate Wage Statement Violations:

16 44. Under Labor Code § 226(a), Plaintiffs and the Class are entitled to recover \$50 for initial
17 violations for inaccurate wage statements and \$100 for subsequent violations, up to a maximum of
18 \$4,000 per employee. Plaintiffs allege Defendant issued wage statements to Plaintiffs and the Class
19 Members that did not accurately list all hours worked by omitting off-the-clock work and by
20 unlawful rounding and inaccurately listing applicable hourly rates.

21 45. Defendant challenged Plaintiffs' claim for Labor Code § 226(e) penalties, including by
22 arguing they were merely derivative of the other claims that lacked merit, and Plaintiffs' failure to
23 prove the underlying claims could result in the dismissal of these derivative claims. Defendant also
24 maintains that it did not knowingly and intentionally commit these alleged violations. *See, e.g.,*
25 Labor Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional
26 failure by an employer").

27 46. Plaintiff's expert estimated Defendant's maximum total exposure on the section 226
28 claim at approximately \$1,847,200.00 (652 employees from October 30, 2022 to October 21, 2024).

1 After considering Defendant's contentions and the potential class certification issues, Class Counsel
2 discounted this amount by 90% to get an adjusted realistic exposure of \$184,720.00.

3 Failure to Pay Final Wages at Termination or Separation:

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

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

14 49. Defendant challenged this claim under Labor Code § 203 with several arguments,
15 including that this claim is merely derivative of the other claims that lacked merit and that under
16 Labor Code § 203, employers are only obligated to pay waiting-time penalties if they "willfully"
17 fail to pay wages due and owing at the time of termination or resignation. As Title 8, California
18 Code of Regulations, § 13520 states: "A willful failure to pay wages within the meaning of Labor
19 Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when
20 those wages are due. However, a good faith dispute that any wages are due will preclude imposition
21 of waiting time penalties under Section 203." Defendant argued that their good faith disputes and
22 lack of willfulness would excuse its violations. Defendant maintained that because they had viable
23 defenses in both law and fact, such penalties were subject to a three-year limitations period under
24 Labor Code § 203(b).

25 50. Plaintiffs' expert estimated Defendant's maximum total exposure on the section 203
26 claim at approximately \$1,874,686.00 (305 terminated employees (commencing on October 30,
27 2020) during the relevant period x 30 days x average hourly rate per year x hours per work day).
28 Given the foregoing arguments, Class Counsel discounted this amount by 90% to get an adjusted

1 realistic exposure of \$187,468.60.

2 Unpaid Sick Pay:

3 51. Labor Code Section 246 affords an employee “who works in California for 30 or more
4 days within a year from the commencement of employment [] paid sick days . . . of not less than
5 one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid time
6 off by the 120th calendar day of employment or each calendar year, or in each 12-month period.”
7 Plaintiffs allege Defendant had a common policy and practice of systemically failing to pay Class
8 Members the requisite sick time pay in accordance with California Law, at the employees’
9 applicable regular rates of pay. Specifically, Plaintiffs allege that Defendant paid sick pay wages to
10 Plaintiffs and Class Members at the incorrect rate of pay. Defendant contends that it paid any sick
11 pay wages owed to Plaintiffs and Class Members at the correct rate of pay. Plaintiffs’ expert
12 estimated Defendant’s maximum total exposure on the unpaid sick pay claim at approximately
13 \$48,686.00 including interest.

14 Failure to Reimburse for Necessary Business Expenditures:

15 52. Under Labor Code § 2802(a) Defendant must indemnify Plaintiffs and Class Members
16 for all necessary expenditures or losses incurred in direct consequence of the discharge of their
17 duties. As discussed above, Plaintiffs allege that Plaintiff and Class Members incurred necessary
18 expenditures in the performance of their job duties for Defendant, including the cost of personal
19 cell phone usage for work-related purposes, but were not reimbursed for those expenses by
20 Defendant. Defendant maintains that Plaintiffs and Class Members did not incur business
21 expenses and/or were properly reimbursed for all business expenses, and further contend that any
22 unreimbursed business expenses were not necessary expenditures as required by Labor Code
23 section 2802.

24 53. Plaintiffs estimated Defendant’s total exposure on the unreimbursed business expenses
25 claim at approximately \$26,460.00 (\$30 x 882 Class Members). However, given Defendant’s
26 reimbursement policy and the potential for the need for individualized inquiries, making class
27 certification of this claim difficult, Class Counsel applied a discount of 80% to get an adjusted
28 realistic exposure of \$5,292.00.

1 PAGA Penalties:

2 54. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows
3 Plaintiffs to obtain civil penalties on behalf of themselves and other aggrieved employees for
4 Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5.
5 Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil
6 penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
8 aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i),
9 seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce
10 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the
11 affected employees. The limitations period as for all penalties is one year prior to the filing of the
12 complaint.

13 55. The provisions of the Labor Code potentially triggering PAGA penalties in this case
14 include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA
15 penalties are not mandatory and are instead permissive. Labor Code § 2699(e)(2) states that "a court
16 may award a lesser amount than the maximum civil penalty amount specified by this part if, based
17 on the facts and circumstances of the particular case, to do otherwise would result in an award that
18 is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App.
19 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant contested
20 Plaintiffs' claim for PAGA penalties.

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

27 57. Plaintiffs estimated Defendant's maximum total exposure on PAGA claims at
28 approximately \$1,879,800.00 (18,798 PAGA Pay Periods x \$100). However, Class Counsel also

1 estimated any PAGA recovery would be substantially reduced, and applied discounts in light of the
2 countervailing arguments with regard to the other causes of action and the Court's power to award
3 "a lesser amount than the maximum civil liability." Class Counsel applied a discount of 95% to get
4 an adjusted realistic exposure of \$93,990.00. The PAGA allocation agreed upon by the Parties
5 therefore was \$70,000.00, subject to the Court's final approval. 75% of that amount (\$52,500.00)
6 will be paid to the LWDA out of the Gross Settlement Amount, and the remaining 25% (\$17,500.00)
7 will remain in the Net Settlement Amount for distribution to the Aggrieved Employees.

8 Unfair Business Practices

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

13 Summary

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

20 60. Class Counsel had to apply appropriate discounts in light of the facts and law as
21 discussed above. In addition, Defendant argued that said employees were dissimilarly situated co-
22 workers, making the certification of all Class Members less than a certainty. This Settlement, like
23 most others, was the product of compromise. As addressed above and by adding up numbers,
24 Plaintiffs estimated that Defendant faced approximately \$2,627,190.50 in total realistic exposure
25 on Plaintiffs' main claims. The Gross Settlement Amount of \$1,990,000.00 therefore represents a
26 recovery for the Class Members of approximately 76% of the total realistic exposure Plaintiffs
27 estimated Defendant could face on these class-wide claims.

28 ///

1 **Class Counsel Fees Payment is Fair and Reasonable**

2 61. Under the Settlement, Class Counsel requests, without opposition from Defendant, an
3 award of \$663,333.33 for attorneys' fees and up to \$45,000.00 for reasonable expenses incurred to
4 prosecute the Action. This request is fair, reasonable, and adequate to compensate Class Counsel
5 for the substantial work they have put into this case. Moreover, the risk they assumed by taking it
6 in the first place as they will not receive any compensation for their efforts until recovery is obtained
7 for the Class. The attorneys' fees award is intended to reimburse Class Counsel for all
8 uncompensated work that they have already done and for all the work they will continue to do in
9 carrying out and overseeing the notification to Class Members, communicating with Class Members
10 regarding their claims, and assisting in the administration of the Settlement if it is preliminarily
11 approved. The requested fee is reasonable for the services provided to Class Members and for the
12 benefits they are to receive.

13 **Class Representative Service Payments are Fair and Reasonable**

14 62. Plaintiffs are entitled to reasonable service payments for their efforts and initiatives in
15 bringing and helping to prosecute this action. Plaintiffs spent significant time better apprising
16 themselves of their rights, deciding whether remedial action should be taken and how it should be
17 taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiffs
18 discussing the case and the law.

19 63. Both before and after the filing of this lawsuit, Plaintiffs conferred with Class Counsel to
20 discuss every aspect of their case. Plaintiffs provided Class Counsel with information about
21 Defendant and about the industry generally, produced and reviewed documents, identified
22 witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation
23 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the
24 Settlement Agreement. In light of the foregoing, Class Counsel believes that the Class
25 Representative Service Payments in the amount of \$10,000.00 to each Class Representative
26 (\$20,000.00 total) is fair and reasonable.

27 **Proposed Class Notice Provides Adequate Notice**

28 64. The notification procedure set out in the Settlement Agreement provides the greatest

1 likelihood that each and every Class Member will receive the Class Notice, attached to the
2 Settlement Agreement as Exhibit A. Under the Settlement, not later than fourteen (14) days after
3 the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the
4 Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement
5 Agreement, ¶ 4.2). The Administrator will mail the Class Notice, attached to the Settlement
6 Agreement as Exhibit A, to all Class Members identified in the Class Data no later than fourteen
7 (14) calendar days after receiving the Class Data from Defendant via first-class USPS mail. (Exhibit
8 1, Settlement Agreement, ¶ 7.4.2). The Class Notice includes a summary of the case and settlement
9 terms and provides Class Members with detailed instructions on how to exclude themselves, object
10 to the settlement, and challenge the number of Workweeks and/or Pay Periods attributed to each
11 Class Member per Defendant's records. (Exhibit 1, Settlement Agreement, Exhibit A, Class Notice).
12 Class Members will have sixty (60) days from the mailing of the Class Notice (plus an additional
13 fourteen (14) days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement,
14 object to the Settlement, or challenge the number of Workweeks and/or Pay Periods. (Exhibit 1,
15 Settlement Agreement, ¶¶ 7.4.4., 7.4.5.) This is the best and most practicable way to ensure the
16 greatest possible number of Class Members will receive the Class Notice.

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

27 **Qualifications and Adequacy of Class Counsel**

28 66. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases,

1 including class actions and PAGA actions on behalf of employees and others who have had their
2 rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs'
3 counsel of record in numerous wage and hour and employment class action and PAGA action cases
4 pending in both state and federal court.

5 67. D.Law is well-qualified and has ample experience, knowledge, and resources to act as
6 counsel and represent Plaintiffs and the putative Class and Aggrieved Employees in this action. Our
7 practice is exclusively focused on employment matters and representing plaintiffs in wage and hour
8 actions with the same or similar causes of actions brought forth in the matter pending before this
9 Court.

10 68. D.Law has litigated and successfully resolved many wage and hour class action cases
11 involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa
12 v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v.
13 Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in
14 Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in
15 Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno,
16 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-
17 L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles,
18 BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632
19 276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara,
20 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los
21 Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of
22 California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of
23 California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et
24 al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time
25 Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v.
26 Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis
27 Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v.
28 Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3

1 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk
2 Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont
3 Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT
4 Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa
5 MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court
6 of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California,
7 Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church &
8 Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL
9 Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo
10 Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account
11 Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369),
12 Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421),
13 Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v.
14 Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha
15 Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-
16 CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of
17 California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court
18 of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern
19 District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al.
20 (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc.
21 (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc.
22 (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat
23 International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care
24 Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v.
25 OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743),
26 Viridi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS
27 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-
28 CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San

1 Diego, 37-2020-00008179-CU-OE-NC), among others.

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

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

21 71. We understand the responsibilities owed as counsel to the class members and the
22 aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims
23 asserted in this action and have remained committed to dedicating the resources necessary to
24 represent the Class and vigorously pursue their claims. Based upon my experience and
25 understanding of the claims and defenses in this action, I believe the settlement is fair, adequate,
26 and reasonable for the Class Members and Aggrieved Employees and all involved, and that the
27 Settlement is well within the range of reasonableness that would permit it to be finally approved. I
28 am not aware of any conflict of interest with Plaintiffs or any other Class Member that would

1 interfere with the duties as Class Counsel.

2 72. On August 12, 2025, Plaintiffs submitted the Class Action and PAGA Settlement
3 Agreement and Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement
4 Agreement and supporting documents to the LWDA. A true and correct copy of the confirmatory
5 email from the LWDA is attached hereto as **Exhibit 3.**

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

8 Executed this 12th day of August, 2025, at Glendale, California

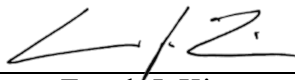
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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Arlen F. Alcantar and David Chiang (“Plaintiffs”) and Defendant Kidango, Inc. (“Defendant” or “Kidango”). The Agreement refers to Plaintiffs and Defendant collectively as “the Parties,” or individually as “the Party.”

Excluded from this Settlement Agreement is a separately agreed to individual settlement of the Action entitled *Arlen F. Alcantar v. Kidango, Inc.* (Case No. 24CV436493) filed in Santa Clara Superior Court by Plaintiff Alcantar involving alleged wrongful termination in violation of public policy, and alleged violations of California Labor Code §§ 98.6, 1102.5, 232.5, and Business and Professions Code § 17200 *et seq* (“Individual Action”).

This Settlement Agreement is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

1. DEFINITIONS.

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1.1 “Action” means Plaintiff Alcantar and Chiang’s class and PAGA representative action against Defendant entitled *Arlen F. Alcantar et al. v. Kidango Inc.* (Case No. 23CV424964) (“Alcantar Action”) pending in Superior Court of the State of California, County of Santa Clara.

1.2 “Administrator” means Apex Class Action LLC, 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, which are anticipated to not exceed \$14,500.00.

1.4 “Aggrieved Employees” means all individuals employed as non-exempt, hourly employees by Defendant within the State of California during the PAGA Period.

1.5 “Class” means all individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of California during the Class Period.

1.6 “Class Counsel” means Emil Davtyan, David Yeremian, Alvin Lindsay, Enoch J. Kim, and Arianna Razi of D.Law, Inc. and Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP (“BNBD”).

1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” means the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, social security number, start and end dates of active employment as a non-exempt employee of Defendant in the State of California, number of Class Workweeks and PAGA Pay Periods (or sufficient information to calculate the number of such workweeks), and any other information required by the Administrator in order to effectuate the terms of the Settlement.

1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11 “Class Notice” means the court-approved Notice of Class Action and PAGA Action Settlement, to be mailed to Class Members, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 “Class Period” means the period commencing on October 30, 2019 and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option.

1.13 “Class Representative(s)” means Arlen F. Alcantar and David Chiang, the named Plaintiffs in the Action seeking Court approval to serve as Class Representatives.

1.14 “Class Representative Service Payments” mean the payments to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15 “Court” means the Superior Court of California, County of Santa Clara.

1.16 “Defendant” means named Defendant Kidango, Inc.

1.17 “Defense Counsel” means Barbara A. Cotter, Terry A. Wills and Karina Sandoval Martinez of Cook Brown, LLP.

1.18 “Effective Date” will be the later of the following: (a) sixty-five days after the date upon which the Court enters Final Approval; (b) the date for filing an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement.

1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

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

1.22 “Gross Settlement Amount” means One Million Nine Hundred Ninety Thousand Dollars (\$1,990,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8, below. The Gross Settlement Amount will be used to pay Individual Class Payments, Employee’s Taxes and Required Withholdings, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Settlement Administration Expenses Payment. The Gross Settlement Amount does not include employer’s share of payroll taxes which will be paid by Defendant in addition to the Gross Settlement Amount.

1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Class Workweeks worked during the Class Period, less Employee’s Taxes and Required Withholding.

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

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

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

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

1.28 “Net Settlement Amount” means the funds available for payments to the Class members on a pro-rata basis, which shall be the amount remaining after the following amounts are deducted from the Gross Settlement Amount: (1) Class Counsel Fees Payment, (2) Class Counsel Litigation Expenses Payment, (3) Settlement Administration Costs, (4) Class

Representative Service Payments; and (5) PAGA Penalties to be paid to the LWDA and PAGA Members.

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

1.30 “Operative Complaint” means the operative Second Amended Complaint filed in Santa Clara Superior Court on March 21, 2025, which added the parties and claims pending in the Chiang Class Action and Chiang PAGA Action to the Alcantar Action.

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

1.32 “PAGA Notice(s)” means Plaintiff Alcantar’s October 30, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a), and Plaintiff Chiang’s January 5, 2024 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd. (a).

1.33 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$17,500.00) and 75% to the LWDA (\$52,500.00) in settlement of PAGA claims.

1.34 “PAGA Period” means the period from October 30, 2022 and continuing through the date of preliminary approval of the Settlement.

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

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

1.37 “Plaintiff(s)” means Arlen F. Alcantar and David Chiang, the named Plaintiffs in the Actions.

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

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

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

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

1.42 “Released Parties” means: Defendant Kidango, Inc. and its past, present, and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, reinsurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, sectors, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

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

1.44 “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, 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 fourteen (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 October 30, 2023, Plaintiff Alcantar filed a Class Action Complaint in the Santa Clara Superior Court (Case No. 23CV424964) against Defendant, alleging the following wage and hour violations: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (12) Violation of Business & Professions Code § 17200 *et seq.* On January 4, 2024, Plaintiff Alcantar filed a First Amended Complaint adding a cause of action under PAGA. On January 5, 2024, Plaintiff Chiang filed a Class Action complaint entitled *David Chiang v. Kidango, Inc.* in the Alameda County Superior Court of California (Case No. 24CV058779) (“Chiang Class Action”) and alleged the same wage and hour violations in the Alcantar Action. On March 21, 2024, Plaintiff Chiang filed a separate representative action complaint entitled *David Chiang v. Kidango, Inc.* in the Santa Clara County Superior Court of California (Case No. 24CV433628) (“Chiang PAGA Action”) and alleged one cause of action for civil penalties under PAGA for various wage and hour violations. In May 2024, Plaintiffs and their counsel engaged in Joint Prosecution and Fee and Cost Sharing Agreement (“JPA”) to collectively represent the Plaintiffs in the prosecution and litigation. All Parties subsequently agreed to mediate the Plaintiffs’ Class and PAGA claims.

2.2 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Alcantar gave timely written notice to Defendant and the LWDA by sending her PAGA Notice on October 30, 2023, and Plaintiff Chiang gave his PAGA Notice on January 5, 2024.

2.3 Prior to mediation, Plaintiffs obtained, through informal discovery, documents, and information pertaining to their wage and hour claims, including, but not limited to, wage and hour policy and procedure documents, adequate sampling of employee time and payroll records, and the exchanges of relevant data points pertaining to the Class and PAGA claims. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.4 On October 21, 2024, the Parties participated in a full-day mediation with Hon. Howard R. Broadman (Ret.), which led to this Agreement to settle the Action and the Parties' agreement to amend the Alcantar Action pending in the Santa Clara County Superior Court of California to add the parties and claims pending in the Chiang Class Action and Chiang PAGA Action, and subsequently dismiss the separate Chiang actions without prejudice.

2.5 On March 21, 2025, Plaintiffs filed a Second Amended Class Action Complaint in the Alcantar Action adding the parties and claims that were pending in the Chiang Class Action and Chiang PAGA Action. Subsequently, on April 1, 2025, the Santa Clara County Superior Court of California subsequently granted Plaintiff Chiang's request to dismiss the separate Chiang PAGA Action without prejudice. On April 8, 2025, the Alameda County Superior Court of California granted Plaintiff Chiang's request to dismiss the separate Chiang Class Action without prejudice.

2.6 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged. Defendant further denies that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment.

2.7 The Parties agree that this Agreement is for settlement purposes only and if, for any reason, the Agreement is not approved, the Agreement will be of no force or effect. In such event, nothing in this Agreement shall be used or construed by or against any party as a determination, admission, or concession of any issue of law or fact in the Action; and the Parties do not waive, and instead expressly reserve, their respective rights with respect to the prosecution and defense of this Action as if this Agreement never existed.

2.8 The Court has not granted class certification.

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

2.10 The Agreement set forth herein intends to achieve the following: (1) an entry of an order approving the Settlement; (2) entry of judgment of the Action; (3) discharge of Released Parties from liability for any and all of the Released Claims; and (4) discharge of Defendant from liability for any and all claims arising out of the Action.

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay One Million Nine Hundred Ninety Thousand Dollars (\$1,990,000.00) and no more as the Gross Settlement Amount and to separately pay any and all Employer Taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1 To Plaintiffs: A Class Representative Service Payment to each Class Representative of \$10,000.00 (\$20,000.000 total) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiffs' request for Class Representative Service Payment that does not exceed this amount. As part of the Final Approval motion, Plaintiffs will seek Court approval for any Class Representative Service Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume 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 \$663,333.33, allocated 70% to D.Law Inc. and 30% to BNBD, and a Class Counsel Litigation Expenses Payment of not more than \$45,000.00. Defendant will not oppose requests for these payments provided that the requests do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. 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 \$14,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$14,500.00, the Administrator will allocate the remainder to the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment is 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. Twenty percent (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. The Parties agree that the Employee's Taxes and Required Withholdings with respect to the wage portion of the Individual Class Payment will be withheld from the Individual Class Payment. Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to the 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 allocate amounts equal to their Individual Class Payments to the Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.

3.2.5 To the LWDA and Aggrieved Employees. PAGA Penalties in the amount of \$70,000.00 are to be paid from the Gross Settlement Amount, with 75% (\$52,500.00) allocated to the LWDA PAGA Payment and 25% (\$17,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. Calculation of Individual PAGA Payment. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$17,500.00) by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Workweeks and Aggrieved Employee PAGA Pay Periods. Based on a review of its records, Defendant estimates approximately 882 Class Members collectively worked a total of 100,944 Workweeks and approximately 652 Aggrieved Employees who worked a total of 18,798 Pay Periods.

4.2 Class Data. Not later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Class Counsel shall not receive a copy of the Class Data or any content thereof. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date. At least five (5) business days prior to Defendant's deadline for funding of the Gross Settlement Amount, the Administrator shall calculate the total Employer Taxes due on the wage portion of the Individual Class Payments and issue Defendant instructions and the amount of the Employer Taxes.

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

4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice

was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the 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 seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced and who requests a check before the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled after the void date, within ten (10) calendar days of the check void date, the Administrator shall transmit the funds represented by such checks to the State of California State Controller's Office, in the Class Member's name to be held as unclaimed property for the Class Member.

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

5. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all the employer's share of payroll taxes owed on the Wage Portion of the Individual Class Payments, Class Members (including the Class Representatives) and Aggrieved Employees will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiff Chiang and his representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Operative Complaint; (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiffs' PAGA Notices; and (c) all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, and wrongful termination, such as by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act;

the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*; and the law of contract and tort (“Plaintiff Chiang’s Release”). Plaintiff Chiang’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff Chiang acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he now knows or believes to be true but agrees, nonetheless, that Plaintiff Chiang’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or his discovery of them. Moreover, Plaintiff Alcantar will provide a Section 1542 waiver in a separate individual agreement along with a general release that separately releases all her claims encompassed under the Operative Complaint and in her separate Individual Action against Defendant, including (1) Violation of Labor Code § 98.6, (2) violation of Labor Code 1102.5, (3) Violation of Labor Code § 232.5; (4) Wrongful Termination in Violation of Public Policy; and (5) Unfair Competition (Bus. & Prof. Code §§ 1700 *et seq.*).

5.1.1 Plaintiff Chiang’s Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs’ Release, subject to applicable carve out listed above, Plaintiff Chiang expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, rights, demands, liabilities, and causes of action that are alleged, or reasonably could have been alleged based on the facts asserted in the Operative Complaint that occurred during the Class Period, including the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code§ 510; (3) Meal Period Liability Labor Code§ 226.7; (4) Rest-Break Liability Labor Code§ 226.7; (5) Violation of Labor Code§ 226; (6) Violation of Labor Code§ 221; (7) Violation of Labor Code§ 204; (8) Violation of Labor Code§ 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code§ 2802; (12) Violation of Business & Professions Code§ 17200, *et seq.*; (13) claims under Labor Code Section 246 *et seq.* and related laws for Paid Sick Leave violations; and (14) all claims under the Wage Orders, including suitable seating claims (collectively “Released Class Claims”). Expressly excluded from the release are all other claims,

including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, retaliation, discrimination, unemployment insurance, disability, social security, workers compensation, and Class claims outside the Class Period.

5.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for the recovery for civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiffs and/or the Aggrieved Employees had, or may claim to have, against Released Parties, which were alleged or were based on the facts in the Operative Complaint and/or the PAGA Notices submitted in connection with the *Alcantar* and *Chiang* Actions, including failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at discharge or resignation; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to provide one day's rest from seven; failure to reimburse necessary business-related expenses; failure to provide suitable seating, and violations of Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 246, *et seq.*, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq.* (collectively "Released PAGA Claims"). This release is limited to claims arising during the PAGA Period, and expressly excludes other PAGA claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, and worker's compensation, and PAGA claims outside of the PAGA Period.

The Settlement shall release and bar all Released PAGA Claims by or on behalf of Plaintiffs and all Aggrieved Employee during the PAGA Period, regardless of whether Plaintiffs and/or an Aggrieved Employee negotiates (cashes) their/his/her settlement checks sent pursuant to this Settlement. The Parties agree that there is no statutory right for any Aggrieved Employee to opt-out or otherwise exclude himself or herself from the PAGA settlement and the associated release of claims and rights under PAGA. The Parties also agree that Aggrieved Employees do not have a right to intervene in or object to the Settlement, or to require a court to receive and consider objections to the Settlement, and that Aggrieved Employees do not have a right to move to vacate a judgment entered in the Action. As such, an individual Aggrieved Employee opting out of the Class has no impact as to his/her standing and/or inclusion in the PAGA settlement assuming they/he/she qualifies as an Aggrieved Employee. Class Counsel agrees to provide timely notice of the Settlement to the LWDA as required under PAGA. Any Aggrieved Employees who submit a valid and timely Request for Exclusion are still entitled to their Individual PAGA Payment and have no right or ability to opt out of the portion of this Settlement releasing the Released PAGA Claims.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiffs will prepare and file a motion for preliminary approval ("Motion for Preliminary Approval").

6.1 Plaintiffs' Responsibilities. Plaintiffs will prepare 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)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of Class and PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Class Counsel attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2))).

6.2 Defendant's Responsibilities. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In the Declaration, Defendant 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. Defendant shall also confer the number of Class Members and the number of Workweeks for the Class during the Class Period.

6.3 Responsibilities of Counsel. Class Counsel is responsible 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 Order to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

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

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

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

7.4 Notice to Class Members.

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

7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. Concurrently with the mailing of the Class Notice, the Administrator will also post a copy of the Class Notice on its website at least until the date of the Final Approval Hearing. 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 Class Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendant, or Class Counsel are 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 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 fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge, though the Court may make a final determination of any dispute. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge, except by the Court.

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

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the Released PAGA Claims, identified in Paragraph 5.3 of this Agreement, and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks and Pay Periods. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is

entitled to presume that the Workweeks and Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and Pay Periods to Defense Counsel and redacted copies to Class Counsel and the Administrator's determination of the challenges. The Administrator will provide similar copies of challenges to Class Counsel after redacting Class Member identifying information, including but not limited to name, address, social security number, email address, and phone number.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain 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, and Class Counsel Litigation Expenses 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. If Final Approval is granted, the Administrator will post the above-listed information of interest for at least 180 days after the date of mailing Individual Class Payments and Individual PAGA Payments.

7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not

later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to: (a) Class Counsel and Defense Counsel containing the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”), along with copies of all valid and timely Requests for Exclusion; (b) Defense Counsel containing the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion, along with copies of all invalid or untimely Requests for Exclusion from Settlement submitted.

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. The Administrator must, on a weekly basis, provide Defense Counsel the names and identifying information of Class Members whose Class Notices have been returned as undeliverable for the purpose of determining if Defendant can provide any additional information to successfully mail the Class Notice.

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

7.8.5 Employer’s Share of Payroll Taxes. The Administrator shall handle all tax document preparation and reporting, including W-2 and/or 1099 Forms, and any other state and federal tax forms. The Administrator shall calculate the amount of the Employer’s Taxes and shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities in a timely manner.

7.8.6 Administrator’s Declaration. Not later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.7 Posting of Final Judgment. Within ten (10) days after the Court has held a Final Approval Hearing and entered the Judgment certifying the Class for settlement purposes

only and approving the Settlement, the Administrator will give notice of judgment to Class Members pursuant to California Rules of Court, rule 3.771(b) by posting a copy of said Judgment on its website at a web address to be included in the Class Notice.

7.8.8 **Final Report by Settlement Administrator.** Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.** Defendant represented that 882 Class Members have worked 100,944 Workweeks during the Class Period. The Parties further agree that if the final Workweeks during the Class Period, which formed the basis of the Settlement, increases by more than ten (10) percent above 100,994 Workweeks (e.g., to greater than 111,038 Workweeks), Defendant at its sole discretions shall either: (1) establish the end date of the Settlement period as the 111,038th Workweek; or (2) pay additional money to the Gross Settlement Amount for the additional release period commensurate with the number of Workweeks that will exceed 111,038 at the same Workweek rate as before. If this provision is triggered and the Gross Settlement Amount is increased, the Parties agree that the portion of the Gross Settlement Amount allocated to attorneys' fees will increase proportionally such that the total amount of the Class Counsel Fees Payment remains one-third of the Gross Settlement Amount after the upward adjustment required by this provision is implemented.

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

10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than two (2) calendar 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.

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

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

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

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected as set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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

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

12. ADDITIONAL PROVISIONS.

12.1 No Effect on Employee Benefit Plans. Neither this Agreement nor any amounts paid under the Settlement will modify any previously credited hours, days, or weeks of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plan, policy, or bonus program. Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement. Defendant does not consider the Individual Class Payments "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

12.2 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 Plaintiffs 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 not 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 Plaintiffs reserve 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).

12.3 Confidentiality Prior to Preliminary Approval. Plaintiffs, 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 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 Administrator and 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 the other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

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

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

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

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

12.8 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 Agreement.

12.9 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this

Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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

12.11 Authority of Signatories. The respective signatories to the Agreement represent that they are fully authorized to enter into this Agreement and bind the respective Parties to its terms and conditions.

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

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

12.14 Attorneys' Fees and Costs. Except as otherwise specifically provided for herein, each party shall bear their own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by them or arising out of the Action and shall not seek reimbursement thereof from any other party in this Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs.

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

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

12.17 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, Plaintiffs 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 destruction, of Class Data.

12.18 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.19 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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

To Plaintiffs:

D.LAW, INC.

Emil Davtyan

Emil@d.law

David Yeremian

d.yeremian@d.law

Alvin Lindsay

a.lindsay@d.law

Enoch J. Kim

e.kim@d.law

Arianna Razi

a.razi@d.law

450 N. Brand Blvd., Ste. 840

Glendale, CA 91203

Telephone: (818) 962-6465

Facsimile: (818) 962-6469

Norman B. Blumenthal

Kyle R. Nordrehaug

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara

La Jolla, CA 92037

Tel.: (858) 551-1223

Fax: (858) 551-1232

E-Mail: norm@bamlawca.com

kyle@bamlawca.com

To Defendant:

COOK BROWN, LLP

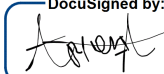
Barbara A. Cotter (SBN 142590)
Terry A. Wills (SBN 133962)
Karina Sandoval Martinez (SBN 355312)
2407 J Street, Second Floor,
Sacramento, California 95816
T. 916-442-3100 | F. 916-442-4227
Email: bcotter@cookbrown.com
twills@cookbrown.com
ksandoval@cookbrown.com

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

12.22 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

ON BEHALF OF PLAINTIFFS

Dated: 8/5/2025, 2025

DocuSigned by:


24B2D0ABCD2404...
Arlen F. Alcantar

Dated: _____, 2025

David Chiang

ON BEHALF OF DEFENDANT

Kidango, Inc

Dated: _____, 2025

Name:
Title:

Barbara A. Cotter (SBN 142590)
Terry A. Wills (SBN 133962)
Karina Sandoval Martinez (SBN 355312)
2407 J Street, Second Floor,
Sacramento, California 95816
T. 916-442-3100 | F. 916-442-4227
Email: bcotter@cookbrown.com
twills@cookbrown.com
ksandoval@cookbrown.com

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

12.22 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

ON BEHALF OF PLAINTIFFS

Dated: _____, 2025

Arlen F. Alcantar

Dated: August 8th _____, 2025

DAVID CHIANG
DAVID CHIANG (Aug 8, 2025 13:41:18 PDT)

David Chiang

ON BEHALF OF DEFENDANT

Kidango, Inc

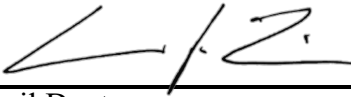
Dated: _____, 2025

Name:
Title:

APPROVED AS TO FORM:

D.LAW, INC.

Dated: August 12, 2025



Emil Davtyan
David Yeremian
Alvin B. Lindsay
Enoch J. Kim
Arianna Razi
Attorneys for Plaintiffs

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

Dated: _____, 2025

Kyle R. Nordrehaug
Attorneys for Plaintiffs

COOK BROWN, LLP

Dated: _____, 2025

Barbara A. Cotter
Attorneys for Defendant Kidango, Inc.

APPROVED AS TO FORM:

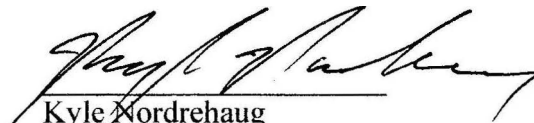
D.LAW, INC.

Dated: _____, 2025

Emil Davtyan
David Yeremian
Alvin B. Lindsay
Enoch J. Kim
Arianna Razi
Attorneys for Plaintiffs

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

Dated: August 8 _____, 2025



Kyle Nordrehaug
Attorneys for Plaintiffs

COOK BROWN, LLP

Dated: _____, 2025

Barbara A. Cotter
Attorneys for Defendant Kidango, Inc.

EXHIBIT A

Arlen F. Alcantar et al. v. Kidango Inc., Santa Clara County Superior Court, Case No. 23CV424964
David Chiang v. Kidango, Inc., Alameda County Superior Court, Case No. 24CV058779
David Chiang v. Kidango, Inc., Alameda County Superior Court, Case No. 24CV433628

*A court has authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
Your legal rights are affected whether you act or do not act.*

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

To: All non-exempt employees in California who are or previously were employed by Kidango, Inc. (“Defendant”) during the Class Period, which is October 30, 2019 and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option (the “Class”).

YOU MAY BE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive a settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, after the Court grants final approval to the settlement. <i>You must, however, keep a current address on file with the Administrator to ensure receipt of your check.</i> Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be <<\$_____>> (less withholdings). See Section 7 below.
CHANGE CONTACT AND ADDRESS INFORMATION	Update your address with the Administrator to ensure your check is sent to the correct address.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT	If you do not want to participate in the class settlement, you may exclude yourself (opt out) of the class portion of the settlement. If you exclude yourself from the class settlement, you will not receive any payment from the Settlement Pool (defined below). This is the only option that allows you to pursue your own claims (in your own lawsuit) against Kidango, Inc. about the legal claims in this case. See Section 14 below. However, even if you exclude yourself from the class settlement, you will still receive a portion of the PAGA settlement and be bound by it.
OBJECT	Write to the Court if you think the settlement is not fair or you can appear at a hearing to explain to the Court why you think the settlement is not fair. See Section 16 below.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **KIDANGO, INC. WILL NOT RETALIATE IN ANY MANNER AGAINST ANYONE FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

BACKGROUND ON THE LAWSUIT

1. **Why did I get this notice?**

You received this notice because Kidango, Inc.'s records identify you as someone who worked for Kidango, Inc. in California as a non-exempt hourly employee any time from October 30, 2019 and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option, making you a "Class Member" during the "Class Period." The settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys General Act ("PAGA"). If you are a Class Member, you are also an "Aggrieved Employee" during the "PAGA Period," which is October 30, 2022 and continuing through the date of preliminary approval of the Settlement.

The purpose of this notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of Santa Clara, and the case is known as *Arlen Alcantar et al. v. Kidango, Inc.* - Case No. 23CV424964 ("Action" or "Lawsuit"). There was a hearing on [REDACTED], 2025 in Santa Clara County Superior Court. The Honorable Charles F. Adams preliminarily approved the Settlement and directed that you receive this notice. The Court will hold a Final Approval hearing concerning the proposed settlement on [REDACTED], 2025 at [REDACTED], in Department 7 of the Santa Clara County Superior Court located at 191 N. First Street, San Jose, CA 95513. The Final Approval Hearing may be continued to another date without further notice.

2. **What is this Class and PAGA Lawsuit about?**

On October 30, 2023, Plaintiff Alcantar filed a Class Action Complaint in Santa Clara Superior Court (Case No. 23CV424964) against Defendant, alleging the following wage and hour violations: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; 8. Violation of Labor Code § 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (12) Violation of Business & Professions Code § 17200 *et seq.* On January 4, 2024, Plaintiff Alcantar filed a First Amended Complaint adding a cause of action under PAGA.

On January 5, 2024, Plaintiff Chiang filed a Class Action complaint in the Alameda County Superior Court of California (Case No. 24CV058779) ("Chiang Class Action") and alleged the same wage and hour violations in the Alcantar Action. On March 21, 2024, Plaintiff Chiang filed a separate representative action complaint in the Santa Clara County Superior Court of California (Case No. 24CV433628) ("Chiang PAGA Action") and alleged one cause of action for civil penalties under PAGA for various wage and hour violations. In May 2024, Plaintiffs and their counsel engaged in Joint Prosecution and Fee and Cost Sharing Agreement ("JPA") to collectively represent the Plaintiffs in the prosecution and litigation. All Parties subsequently agreed to mediate the Plaintiffs' Class and PAGA claims. Both Plaintiffs Alcantar's and Plaintiff Chiang's class and representative claims are on behalf of all current and former non-exempt employees who worked for Defendant in California during the Class Period.

Kidango, Inc. denies all allegations in the Lawsuit and contends that it has fully complied with the California Labor Code. The settlement is not an admission of any wrongdoing by Kidango, Inc. or an indication that any law was violated or that this case was suitable for class or representative treatment.

On October 21, 2024, through arms-length negotiations at a mediation with an experienced wage and hour mediator, Hon. Howard R. Broadman (Ret.), the Parties reached a class and PAGA settlement subject to Court approval and agreed to amend the Alcantar Action pending in the Santa Clara County Superior Court of California to add the parties and claims pending in the Chiang Class Action and Chiang PAGA Action, and subsequently dismiss the separate Chiang actions without prejudice.

On March 21, 2025, Plaintiffs filed a Second Amended Class Action Complaint in the Alcantar Action adding the parties and claims that were pending in the Chiang Class Action and Chiang PAGA Action. Subsequently, on April 1, 2025, the Santa Clara County Superior Court of California subsequently granted Plaintiff Chiang's request to dismiss the separate Chiang PAGA Action without prejudice. On April 8, 2025, the Alameda County Superior Court of California granted Plaintiff Chiang's request to dismiss the separate Chiang Class Action without prejudice.

3. Why is there a settlement?

The Court has not decided in favor of Plaintiffs Arlen Alcantar and David Chiang, or in favor of Kidango, Inc., or made any decision as to whether this case could proceed on a class or representative basis. There was no trial. Instead, both sides agreed to a no-fault settlement of the Lawsuit.

4. Who are the Parties in this Lawsuit?

Plaintiffs Arlen Alcantar and David Chiang were employed by Kidango, Inc. as an hourly employee in the state of California. Defendants are Kidango, Inc. and released parties as addressed in the settlement agreement.

5. Who are the Attorneys for the Parties?

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THE TERMS OF THE SETTLEMENT

6. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment, or Maximum Settlement Amount, of \$1,990,000.00 (referred to as the "Settlement Amount"). From the Settlement Amount, Class Counsel will apply to the Court for attorneys' fees of \$663,333.33 (70% to D.Law Inc. and 30% to BNBD) and \$45,000.00 in costs; a Class Representative Enhancement Award of \$10,000.00 each (\$20,000.00 total) to Plaintiffs Arlen F. Alcantar and David Chiang for their work and efforts prosecuting this case); a \$52,500.00 payment to the California Labor Workforce Development Agency ("LWDA") out of \$70,000.00 allocated to PAGA; and settlement administration expenses to Apex Class Action, estimated at \$14,500.00. The exact amount of the attorneys' fees, litigation costs, class representative service payment, and settlement administration expenses will be determined by the Court at the Final Approval hearing. The remaining portion of the Settlement Amount, the "Net Settlement Amount" is currently estimated to be approximately **\$1,177,166.67**. The Net Settlement Amount will be apportioned and paid out as Individual Class Payments to the Participating Class Members, who are the Class Members who do not request to be excluded ("opt out") from the settlement.

7. How will the Individual Class Payments to Participating Class Members be calculated?

Participating Class Members will receive Individual Class Payments as a proportional amount of the Net Settlement Amount. **A claim form is not required.** Class Members who opt out of the class settlement will not receive an Individual Class Payment and will not be bound by the class portion of this Settlement.

Each Class Member's Individual Class Payment will be a pro rata share of the Net Settlement Amount. An Individual Class Payment is 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.

All Individual Class Payments to Class Members shall be allocated as follows for tax purposes: 20% of each Individual Class Payment reflects a compromise of a claim for alleged unpaid wages; 80% of each Individual Class Payment reflects a compromise of a claim for alleged interest and penalties. The portion of the Individual Class Payment attributable to unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings and will be reported on an IRS Form W-2. Class Members will receive an IRS Form 1099 for the portion of the Settlement Payment attributable to alleged interest and penalties if required by law. Class Members will be responsible for correctly characterizing the Individual Class Payment for tax purposes and paying taxes due, if any.

Your total estimated Workweeks are . Based on that, your anticipated approximate Individual Class Payment is .

8. How will the PAGA Payment be allocated to the LWDA and Aggrieved Employees?

The Parties will ask the Court to approve the \$70,000 PAGA Penalties in settlement of claims for civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties, or \$52,500.00, will be paid

to the California Labor and Workforce Development Agency. The remaining 25% of the PAGA Penalties, or \$17,500.00, will be distributed to the Aggrieved Employees as Individual PAGA Payments.

No claim form is required to receive an Individual PAGA Payment. Because Aggrieved Employees cannot opt out of the PAGA settlement, if you are an Aggrieved Employee and you opt out of the class settlement, you will still receive an Individual PAGA Payment and be bound by the PAGA settlement.

Each Aggrieved Employee's Individual PAGA Payment will be a pro-rata share of the 25% of the PAGA Penalties to be distributed to Aggrieved Employees. It will be based on the number of pay periods that each Aggrieved Employee worked for Kidango, Inc. during the PAGA Period (from October 30, 2022 and continuing through the date of preliminary approval of the Settlement) as a proportion of all Pay Periods for all Aggrieved Employees. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099, if required by law.

Your total estimated Pay Periods are [REDACTED]. Based on that, your anticipated Individual PAGA Payment is [REDACTED].

HOW TO GET A PAYMENT

9. How can I get a settlement payment?

If you do nothing, you will automatically receive your Individual Class Payment and Individual PAGA Payment (if any) approximately 30 days after the Court's approval of the Settlement becomes final. You must notify the Administrator of any change in your name, mailing address, and/or telephone number if the information shown on this is not correct. **It is your responsibility to keep the Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Administrator has on file for you.** You can contact the Administrator by U.S. Mail, email, or phone at [REDACTED] if you need to update contact information.

10. What do I do if I believe my Workweeks or Pay Periods are incorrect?

If you believe the Workweeks and Pay Periods above are not correct, you may send a letter to the Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before [REDACTED], 2025. *[60 days within mailing of Notice]* You should include any documents or other information which supports what you believe supports that you worked a different number of Workweeks or Pay Periods. The Administrator will resolve any dispute regarding these issues based on Kidango, Inc.'s records and any information you provide.

11. When can I expect to receive a settlement check?

Individual Class Payments and Individual PAGA Payments will be mailed to Participating Class Members and Aggrieved Employees approximately 30 days after the Court's approval of the Settlement becomes final, which will generally occur after the Court grants final approval and enters judgment and the time for filing an appeal has passed.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks that remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in

the name of each Class Member and/or Aggrieved Employee who did not cash his or her settlement check. If your settlement check is lost or misplaced, contact the Administrator immediately.

WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT

12. What am I giving up to get an Individual Class Payment?

If the Court approves this Settlement and unless you exclude yourself, you will become a Participating Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Kidango, Inc. concerning the legal claims being resolved in this Settlement. Specifically, you will be giving up or “releasing” the claims described below effective on the date when Defendant fully funds the Gross Settlement Amount and all the employer’s share of payroll taxes owed on the Wage Portion of the Individual Class Payments:

Released Class Claims: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims, rights, demands, liabilities, and causes of action that are alleged, or reasonably could have been alleged based on the facts asserted in the Operative Complaint that occurred during the Class Period, including the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code§ 510; (3) Meal Period Liability Labor Code§ 226.7; (4) Rest- Break Liability Labor Code§ 226.7; (5) Violation of Labor Code§ 226; (6) Violation of Labor Code§ 221; (7) Violation of Labor Code§ 204; (8) Violation of Labor Code§ 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code§ 2802; (12) Violation of Business & Professions Code§ 17200; *et seq.*; (13) claims under Labor Code Section 246 *et seq.* and related laws for Paid Sick Leave violations; and (14) all claims under the Wage Orders, including suitable seating claims (collectively “Released Class Claims”). Expressly excluded from the release are all other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, retaliation, discrimination, unemployment insurance, disability, social security, workers compensation, and Class claims outside the Class Period.

13. What PAGA Claims are released by this Settlement?

Effective on the date when Defendant fully funds the Gross Settlement Amount and all the employer’s share of payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for the recovery for civil penalties, attorneys’ fees and costs permissible under PAGA which Plaintiffs and/or the Aggrieved Employees had, or may claim to have, against Released Parties, which were alleged or were based on the facts in the Operative Complaint and/or the PAGA Notices submitted in connection with the *Alcantar* and *Chiang* Actions, including failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at discharge or resignation; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to provide one day’s rest from seven; failure to reimburse necessary business-related expenses; failure to provide suitable seating, and violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 246, *et seq.*, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq.* (collectively “Released PAGA Claims”). This release is limited to claims arising during the PAGA Period, and expressly excludes other PAGA claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability, social security, and worker’s compensation, and PAGA claims outside of the PAGA Period.

Defendant and the Released Parties will be entitled to assert this release of the PAGA claims in this Action as a defense to future claims against it for penalties by the LWDA or under the PAGA on behalf of the LWDA with respect to the Released PAGA Claims.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

14. How do I opt out of the class settlement?

If you wish to pursue your own separate lawsuit against Kidango, Inc. for the claims asserted in the Lawsuit, or if you otherwise wish not to participate in the class settlement for whatever reason, you should exclude yourself from this case (that is, opt out of the class portion Settlement). However, you cannot opt out of the PAGA portion of the settlement. Class Members who opt out of this Settlement will still be bound by the PAGA portion of the Settlement and will receive an Individual PAGA Payment.

To opt out of the class portion of the Settlement and the release of Released Class Claims, you must provide a signed and dated letter to the Administrator requesting to be excluded. The letter should include your reasons for excluding yourself and sufficient identifying information, and must state in substance:

“I want to opt out of the class action settlement in the lawsuit entitled *Alcantar/Chiang v. Kidango, Inc., Santa Clara County Superior Court Case No. 24CV436493* filed in the Superior Court of California, County of Santa Clara.”

The opt-out request letter must include the case name, case number and your full name, must be signed by you, and must be postmarked and mailed to the Administrator at the following address (or in the enclosed envelope) on or before [REDACTED], 2025. [60 days within mailing of Notice] Opt-out requests postmarked after the deadline will be invalid.

Alcantar/Chiang v. Kidango, Inc.
Administrator
c/o Apex Class Action
P. O. Box _____
_____, _____

15. If I don't exclude myself from the class settlement, can I sue Kidango, Inc. for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Kidango, Inc. Releasees for the claims being released by this Settlement, the Released Class Claims. If you have a claim or lawsuit already filed against Kidango, Inc. or any of the Released Parties you should speak to your lawyer in that case immediately. You may need to exclude yourself from this Settlement to continue your own lawsuit. You cannot exclude yourself from the PAGA portion of the Settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections and notices of intent to appear at the Final Approval Hearing must be mailed to the Administrator and postmarked on or before _____, 2025, at the following address:

Alcantar/Chiang v. Kidango, Inc.
Administrator
c/o Apex Class Action
P. O. Box _____
_____, _____

The written objection should state your name and describe all legal and factual reasons that you object to the terms of the settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the final approval hearing, the Settlement Agreement will be approved and you will receive your settlement share. If you do not submit a written objection, you may still appear at the final approval hearing to voice your objection or to otherwise observe the proceedings. 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. Although class members may appear in person, the judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class members who wish to appear remotely should contact Class Counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class Members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll free conference call number for Department 7.

THE COURT'S FINAL APPROVAL HEARING

17. When and where will the Court decide whether to grant final approval of the settlement?

The Court will hold a Final Approval hearing in Department 7 of the Santa Clara County Superior Court located at 191 N. First Street, San Jose, CA 95513 on _____ 2025, at ____ p.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Class Representative's service payment, and the Administrator's fees and expenses.

Although class members may appear in person, the judge overseeing this case encourages remote appearances. (As of August 15, 2022, the Court's remote platform is Microsoft Teams.) Class Members who wish to appear remotely should contact Class Counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class Members may appear remotely using the Microsoft Teams link for Department 7 (Afternoon Session) or by calling the toll-free conference call number for Department 7.

The Court may reschedule the Final Approval hearing without further notice to Class Members. You can also check the Santa Clara County Superior Court website at <https://portal.scsccourt.org/> for changes to the hearing schedule. Any Class Member who files a notice of intent to appear at the Final Fairness hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it but you may. You may also hire and pay your own lawyer to attend if you so desire.

GETTING MORE INFORMATION

19. Whom may I contact if I have questions about the settlement?

You may contact Class Counsel at the contact information listed above in Paragraph 5 if you have any questions about the Settlement. You may also contact the court-appointed Administrator, Apex Class Action, by calling toll-free 1-800_____, or you can write to *Alcantar/Chiang v. Kidango, Inc.*, Administrator at [address].

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR KIDANGO, INC.'S MANAGERS, SUPERVISORS, OR ATTORNEYS FOR MORE INFORMATION.

EXHIBIT 2

October 30, 2023

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

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

VIA CERTIFIED MAIL TO:

(by certified mail to Kidango, Inc.)

Kidango, Inc.
44000 Old Warm Springs Blvd.
Fremont, CA 94538
Certified Mail Tracking Number:

Designated Agent for Service for Kidango, Inc.
44000 Old Warm Springs Blvd.
Fremont, CA 94538
Certified Mail Tracking Number:

**Re: Labor Code § 2698, *et seq.* Penalties - PAGA Notice Letter to LWDA
Arlen Alcantar v. Kidango, Inc., et al.
Superior Court for the County of Santa Clara**

Gentlepersons:

This office represents Plaintiff Arlen Alcantar (“Plaintiff”) and other similarly aggrieved employees employed as non-exempt, hourly workers and in related positions by Defendants in California during the relevant period (collectively “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2810.5, 2698, and 2699, *et seq.*; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). 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 Defendants Kidango, Inc. and Does 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

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 Santa Clara Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.



Relevant Facts

Plaintiff and the Aggrieved Employees were employed as hourly, non-exempt Employees by Defendants in positions generally pertaining to providing teaching and childcare services to Defendant' clients. Plaintiff, and upon information and belief the other similarly situated Aggrieved Employees, were required to perform work tasks based out of Defendants' schools, day cares, and centers in California. Plaintiff was employed by Defendants as a teacher associate, and Defendants tasked her with duties that included assisting with planning, preparing, and implementing daily program, assisting in planning and preparing the learning environment, performing primary care giving responsibilities, assisting in maintaining a clean and safe environment, attending meetings as requested, and performing assigned duties.

Defendants employed other similarly situated Employees as associate teachers, master teachers, teacher aides, lead teachers and in similar and related positions in providing teaching and childcare services to Defendants' clients (frequently referred to herein as "Students' Parents") in Fremont, Union City, San Leandro, Hayward, San Jose, Newark, Dublin, Concord, and throughout California. Plaintiff and the other similarly situated Aggrieved Employees worked at Defendants' behest without being paid all wages due and without being provided all required breaks. More specifically, Plaintiff and the other similarly situated Aggrieved Employees were employed by Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same policies and practices (3) and endured similar violations at Defendants' hands.

Defendants required Plaintiff and the Aggrieved Employees to work off the clock, but Defendants failed to accurately record the hours they were on the clock, failed to pay them at the appropriate rates for all hours worked, failed to pay all wages due and owing at termination or resignation, and failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements. Defendants also failed to provide Plaintiff and the Aggrieved Employees with lawful meal and rest periods, as Employees were required to remain under Defendants' control and were not provided with the opportunity to take full uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable paragraphs of the IWC Wage Orders.

Defendant KIDANGO, INC. is a California corporation which lists its principal address in Fremont, California with the California Secretary of State. The wage statements issued to Plaintiff list "KIDANGO, INC" as her employer with an address in Roseville, California, and upon information and belief the wage statements Defendants issued to the other Aggrieved Employees listed the same employer and address. KIDANGO, INC.'s web-site claims to be the largest provider of preschool in the Bay Area, and upon information and belief it operates classroom facilities and locations in California including in Fremont, Union City, San Leandro, Hayward, San Jose, Newark, Dublin, and Concord, California.

The Aggrieved Employees, including Plaintiff, are non-exempt employees pursuant to the applicable Wage Order of the Industrial Welfare Commission ("IWC"). During the period of four years prior to the filing of this action through its resolution, the Employee Aggrieved Employees were employed by Defendants and worked in non-exempt positions at the direction of Defendants in the State of California. Plaintiff and the 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 Plaintiff and the Aggrieved Employees all wages due and owing, including compensation for off the clock work, noncompliant meal and rest breaks, and Defendants' failure to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

During the course of Plaintiff and the Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all hours they were performing works tasks or remaining under Defendants' control (resulting in "off the clock" work) and for all their overtime hours worked, and they were not paid at the required rates for overtime. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants subjected Plaintiff and the Aggrieved Employees to similar policies and practices which resulted in similar violations as to the other similarly situated non-exempt, hourly employees based out of their schools, daycares facilities and centers in California.

Plaintiff was generally scheduled by Defendants to work five days per week for eight-to-nine-hour shifts. Plaintiff's scheduled shift times generally spanned from at least 6:30 a.m. to 3:30 p.m. On many occasions, Plaintiff was required to work longer shifts with and additional couple of hours only if it was approved by Defendants for payment at an overtime premium rate of 1.5 times Plaintiff's hourly rate. In spite of this, Plaintiff was required by Defendants to endure substantial off the clock work before and after her scheduled shift hours. In fact, Plaintiff was explicitly and frequently told by Defendants' Center Director that Plaintiff would not be paid overtime. Wage statements issued by Defendants evidence biweekly pay periods with well over ninety hours worked at the regular rate with no mention of Plaintiff being paid at the correct overtime rate for all hours over eight in a work shift and 40 in a work week.

Defendants' policy and practice of requiring systematic off the clock work flowed in part from their unlawful timekeeping procedures. Defendants required Plaintiff and the Aggrieved Employees to record timekeeping entries through a mobile application on their personal cell phones. While Defendants required time punch records for shift start and end times and meal period beginning and end times, they were not recorded contemporaneously. Defendants instead modified Plaintiff's timekeeping entries to reduce her hours worked so she would only be paid based on her scheduled shift hours rather than her actual hours worked. Plaintiff recalls receiving payments that reflected her scheduled shift hours, even on occasions where Plaintiff worked substantial hours beyond her scheduled shift end time.

Defendants also required Plaintiff to be prepared to work prior to her scheduled start time. Plaintiff would generally arrive to work several minutes prior to her scheduled shift start time so she could then clock in at her scheduled shift time throughout her employment with Defendants and was thus compelled to be under Defendants' control and working off the clock prior to her scheduled shift time. It was also common for Students' Parents to occasionally drop off their children at Defendants' centers prior to Plaintiffs' scheduled shift time, and in such instances,



Plaintiff was compelled to begin supervising and caring for the children and tending to her job responsibilities prior to her scheduled start time. Defendants' timekeeping procedures and practices did not account for such off the clock work. In fact, just as she was instructed she would not be paid overtime, Defendants' Center Director informed Plaintiff she would not be paid for hours worked prior to her scheduled start time.

Moreover, Defendants required that Plaintiff and the Aggrieved Employees to undergo a COVID-related medical screening prior to clocking in at work. Defendants failed to compensate Plaintiff, and upon information and belief the other Aggrieved Employees, for this mandatory time Defendants required them to remain under Defendants' control during screening procedures and while waiting for this mandatory pre-shift activity to be completed.

Defendants also required Plaintiff to undergo several hours of off the clock when she was training during the first stages of her employment, as Defendants required her to watch hours of mandatory training videos without compensation. Upon information and belief, Aggrieved Employees were also subject to Defendants' similarly unlawful training practices and policies that resulted in off the clock work.

Additionally, Plaintiff received messages, calls, and emails on her personal cellphone during and after work hours regarding work-related matters. Defendants required that Plaintiff and the Aggrieved Employees download and use the "Learning Genie" application on their personal cellphone to communicate with Students' Parents. Plaintiff was therefore frequently engaged off the clock in communicating with Students' Parents using the Learning Genie application and responding to emails and messages using her personal cellphone, which often took up to 2-3 hours per night. Additional systematic off the clock work occurred in the form of Defendants' failure to compensate Plaintiff and the Aggrieved Employees for such off-the-clock communications.

Plaintiff was also frequently required to respond to work related demands during her meal periods, which often resulted in late meal periods after the fifth hour of work, especially when Defendants were understaffed. In such instances, Plaintiff was compelled to cut her meal periods short and clock back in. Despite this, Plaintiff frequently noticed that her time entries would reflect full 30-minute lunch periods taken before the fifth hour of work. When Plaintiff questioned whether she would be paid for her missed or interrupted meal periods, Defendants' Center Director informed Plaintiff that she would not be compensated and modified Plaintiff's time entries to reflect complaint meal periods.

Defendants' uniformly applied policies and practices resulted in rampant off the clock work and time shaving, and this in turn resulted in Plaintiff working well over eight hours in her work shifts. Defendants should have paid these hours at the required overtime premium rate, but Defendants' unlawful efforts to write off and minimize overtime hours resulted in further systematic failure to pay all wages at the required rates, including overtime. To whatever extent Defendants paid any of these overtime hours worked, upon information and belief they failed to



include all forms of remuneration, such as shift differentials and bonuses, in the regular rate used to calculate and pay the overtime that Defendants did pay.

Plaintiff was therefore not paid for all her hours worked at the required minimum and overtime wage rates due to Defendants' uniformly applied and unlawful policy and practice of requiring Employees to work off the clock and without pay. Defendants systematically underpaid Plaintiff and the Aggrieved Employees by failing to pay them at the required overtime rates for all hours over eight in a work shift or over forty in a work week. Upon information and belief, the Aggrieved Employees were bound by similar scheduling and timekeeping policies and endured similar violations at Defendants' hands as Plaintiff. The above described off the clock work also resulted in Plaintiff not being paid at the correct overtime rate for all her hours worked, as she was paid at a regular hourly rate for time after eight hours when she should have been paid an overtime premium.

Defendants have either failed to maintain timekeeping records for Plaintiff that would permit Plaintiff to discover the nature and extent of the off the clock work Defendants required and the actual hours Plaintiff worked or have otherwise declined to produce them to Plaintiff in response to timely and lawful requests. By failing to pay for all hours worked, and by under-recording regular hours to the detriment of the Aggrieved Employees, Defendants have committed knowing and intentional ongoing violations of the record keeping requirements under the Labor Code, including section 1174, by either failing to maintain records or maintaining inaccurate ones.

The failure to pay for all hours worked and underpayment of wages to Plaintiff and the Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which upon information and belief applied uniformly to the other Aggrieved Employees. As a result of the above-described unlawful requirements to work off the clock, the failure to accurately record all hours worked and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Plaintiff and the Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight hours in any given day and/or more than forty hours in any given week.

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

Defendants also failed to provide Plaintiff and the Aggrieved Employees with their required meal periods and the at least two ten-minute rest breaks required at a minimum for Plaintiff's scheduled shift durations. The above described off the clock work contributed to Defendants' common policy of failing to provide lawful meal periods to Plaintiff and the Aggrieved Employees, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s).



Defendants similarly failed to authorize and permit Plaintiff and the employee Aggrieved Employees to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

More specifically, Plaintiff worked shifts that entitled her to at least one meal period, but as addressed above, Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take a full 30-minute lunch breaks. Plaintiff was frequently required to respond to work related demands during her meal periods, especially when Defendants were understaffed. In such instances, Defendants' policies and practices and management pressure compelled her to cut her meal periods short and clock back in well before the end of 30 minutes, but the actual hours were not ultimately reflected in Plaintiff's timekeeping records and the meal period would appear to be compliant. Defendants' practices and procedures, coupled with management expectations, contributed to Employees working through meal breaks or not taking them at all.

Additionally, Defendants inputted into their timekeeping system that Plaintiff and Aggrieved Employees took a 30-minute meal period and did so before the fifth hour of work as required under the Labor Code and Wage Orders. Defendants thus recorded compliant meal breaks without regard to whether the meal periods were actually taken, were taken before the fifth hour of work, or were taken in their entirety without interruption.

Therefore, meal period violations systematically occurred ongoing throughout all of Plaintiff's work shifts where Defendants both failed to provide a lawful meal period or a premium wage payment in lieu thereof, and then also unlawfully deducted 30 minutes from Plaintiff's hours worked for the day. To the extent Defendants did pay Plaintiff and the Aggrieved Employees a meal period premium, upon information and belief Defendants failed to pay them a premium pay of one hour at the regular rate and/or failed to include all forms of remuneration beyond hourly wages in the regular hourly rate used to pay the one-hour premium wage. Upon information and belief, the other Aggrieved Employees were subjected to similar unlawful policies and practices and endured similar violations as Plaintiff.

Defendants thus failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Plaintiff and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five hours during a shift without receiving compliant meal periods. Additionally, as addressed above, Defendants followed a practice of requiring off the clock work in a manner that required Employees to work during breaks, thus leading to further violations.

Upon information and belief, Defendants' systems did not automatically generate a meal period premium under Labor Code § 226.7 for meal periods that commenced after five hours into a work shift or in the event the time records reflected a meal period of less than thirty minutes. The pay summaries provided by Defendants to Plaintiff failed to reflect any meal and rest period premiums paid to Plaintiff, despite the fact that Defendants failed to provide Plaintiff and the Aggrieved Employees with all legally required off-duty, unpaid meal periods and all their legally



required off-duty, paid rest periods. However, upon information and belief, in the event Defendants did pay any meal period premiums, they did so at the employee's customary regular rate of hourly compensation without including all forms of remuneration in that hourly rate calculation, for example by omitting performance-based bonuses and the like from the rate at which meal premiums were paid.

As a result, Defendants' failure to provide Plaintiff and the 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. As further detailed above, Defendants also failed to pay Employees "premium pay," i.e., one hour of wages at each Employee's effective regular hourly rate of compensation for each meal period or rest break that Defendants failed to provide or deficiently provided.

Similar violations resulted from Defendants' failure to authorize and permit Plaintiff and the Aggrieved Employees to take duty-free, net ten-minute rest breaks for every four hours of shift work, or major fraction thereof. Plaintiff and the other similarly situated Aggrieved Employees were required to remain under Defendants' control and respond to job demands during rest breaks and if they ever received a first break, they were neither authorized nor permitted the opportunity to take a second or third rest break. In fact, Defendants implemented a written policy prohibiting employees from leaving the premises during their rest breaks, thus requiring Employees to unlawfully remain under their control during what was supposed to be duty free and uninterrupted rest break time.

While Defendants made some effort to schedule one ten-minute rest break on some work shifts, it was often untimely and was frequently interrupted by work-related demands. In fact, Plaintiff was required to remain on premise during her rest breaks in order to be readily available to respond to work-related demands. Moreover, second and third 10-minute rest breaks were neither scheduled nor contemplated by Defendants. Plaintiff cannot recall a time during her employment with Defendants where she took a second or third break, despite being entitled to receive at least two paid, timely, uninterrupted and duty-free net ten-minute rest breaks during each of her work shifts, and three on the occasions when she worked over ten hours on a shift.

Defendants' uniformly applied policies and practices thus typically resulted in a failure to authorize and permit rest breaks. Plaintiff and the Aggrieved Employees worked shifts of at least eight hours, which required them to receive at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. On these occasions, Defendants failed to authorize or permit Plaintiff and other Aggrieved Employees to take a second and third rest break.

During rest periods, employers must relieve employees of all duties and relinquish control over how employees spend their time. Plaintiff and the Aggrieved Employees were and are under Defendants' control when they are working through rest breaks and remaining under Defendants' control. Plaintiff and the Aggrieved Employees were thus 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 hour's wages in lieu thereof. They were required to remain on-duty during breaks or portions of their breaks, thus making them either untimely or shortened and on-duty, and they were also prevented from leaving the premises and were otherwise required to remain under Defendants' control during rest breaks under Defendants' uniformly applied and unlawful policies and practices.

Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock work and on-duty work while on unpaid meal breaks. In addition to failing to authorize and permit rest breaks, Defendants unlawfully deducted up to 30 minutes for meal periods that were rarely fully provided or otherwise received without violation. Thus, by deducting 30 minutes for a meal period that was generally not lawfully provided, Defendants effectively and unlawfully deducted at least 30 minutes of hours worked from each Employee's daily work shifts. By not compensating Employees for all hours worked, including at the required wage rates, Defendants unlawfully deducted wages earned in violation of Labor Code § 221.

Defendants also violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who "works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Defendants failed to provide Plaintiffs and the other similarly aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Additionally and upon information and belief, Defendants have failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: "If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty." Plaintiff accordingly seeks this relief available for Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Defendants have also consistently failed to provide Aggrieved Employees with timely, accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws, including by the above-described requirement of off the clock work, failure to pay all overtime and failure to pay all wages at the appropriate premium rates, along with failure to pay premium wages for unprovided or otherwise unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages and by the systematic and unlawful deductions Defendants took from Employee wages. Defendants have also made it difficult to account with precision for the unlawfully withheld wages and meal and rest period compensation



owed to Plaintiff and the Aggrieved Employees, during the liability period, including to the extent they required off the clock work or automatically deducted hours or failed to pay overtime wages at the overtime rate and to the extent they did not implement and preserve a record-keeping method as required for non-exempt employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief, recorded hours worked were not maintained or were not accurately maintained for work shifts and meal periods, which were automatically presumed by Defendants to have been lawfully provided when they were not. Defendants also failed to accurately record and pay for all regular and overtime hours worked and submitted by Plaintiff and the Aggrieved Employees, including by failing to pay all overtime hours worked and/or failing to pay it at the correctly calculated overtime premium rate.

Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately reporting total hours worked and total wages earned by Plaintiff and the Aggrieved Employees, along with the appropriate applicable rates, among other requirements. Plaintiff and Aggrieved Employees are therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). 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, and 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.

Defendants also required Plaintiff and the Aggrieved Employees to work hours off the clock before and after their shifts for which they were not compensated. As addressed above, Employees were required to endure off the clock work during the on-duty meal and rest periods and were not provided with sick pay and supplemental sick leave and were subjected to systematic off the clock work. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or failed to pay it at the correct rate, as addressed above. Therefore, Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiff and other similarly situated Employees at the time of their termination or within seventy-two hours of their resignation, as required by California wage-and-hour laws, including Labor Code § 203.

Defendants have regularly required Plaintiff and the Aggrieved Employees to incur necessary business expenses in the course of performing their required job duties without reimbursement. These include the cell phone-related expenses Plaintiff incurred in responding to messages and calls from Defendants. Moreover, Plaintiff was required to download and use a timekeeping application on her personal cellphone. Plaintiff was also required to download the “Learning Genie” application on her personal cellphone to communicate with Students’ Parents and Defendants’ staff. Upon information and belief, the other Aggrieved Employees endured similar violations at Defendants’ hands as Plaintiff, and they must be reimbursed for these necessary business expenses under Labor Code § 2802. Defendants systematically failed to do so.



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.

Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants’ control during breaks and due to the work demands placed upon them by Defendants’ management and due to unlawful rounding. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay minimum wages to 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 forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants’ conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Aggrieved Employees are entitled to seek and recover statutory costs.



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

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

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. 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 rounded, changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt 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 or to attend and participate in company required activities or remain under Defendant's control. When considered in combination with the unlawful rounding to their detriment, Aggrieved Employees were not properly compensated, nor were they paid overtime rates or the correct overtime rate (addressed above) for hours worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on information and belief, 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 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 due to the work demands placed upon them by Defendants' management, 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 due to Defendants' policies and practices.

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. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e., one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff 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 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 due to the work demands placed upon them by Defendants' management, and Defendants' policy discouraged and effectively prevented Aggrieved Employees from leaving Defendants' premises. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions. Under the PAGA, and following exhaustion of the notice period, Plaintiff 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 Wage Statements in Violation of Labor Code § 226

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

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above, and failed to list accurate rates of pay due to miscalculations of overtime and premium pay. 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, ..."

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed



above, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or deducting the Employees' earned wages, including by the above described off the clock work and unlawful rounding and overtime miscalculation. By not compensating Employees for all hours worked, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

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

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, 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 Keep Records In Accordance With Labor Code § 1174

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

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

Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave

Defendants violated California Labor Code § 246 by not providing all required paid sick days to Plaintiff and the Aggrieved Employees. Labor Code § 246 provides that an Employee who “works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.” Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their required and earned sick days, in violation of Labor Code § 246. Defendants have also failed to provide COVID-19 supplemental sick leave to the Aggrieved Employees during the relevant time period, including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these sections are enforced through Labor Code § 248.5, which requires that: “If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative penalty.”



Plaintiff accordingly seeks this relief available for Defendants' failure to provide Aggrieved Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802

Defendants required Plaintiff and the Aggrieved Employees to pay for necessary work-related expenses they incurred. These included the cell phone related expenses Plaintiff incurred in responding to calls, texts and emails from managers and colleagues and in accessing the internet as required for downloading the Learning Genie application on their phone to communicate with manager, peers, and students' parents. Defendants thus 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).

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

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

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

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the 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, 226, 226.7, 246, 248.1, 248.2, 248.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and 2698 et seq., 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 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) Unlawful Deductions and Failure to Reimburse Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 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 §§ 221, 1197, 1197.1, 1198, 2802, 2699.5,



and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) Failure to Provide Paid Sick Days and COVID-19 Supplemental Sick Leave: For Defendants' failure to provide Employees with all their required and earned sick days and all their COVID-19 supplemental sick leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198, 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(g) All Other Alleged Violations of the Labor Code and IWC Wage Orders: For Labor Code §§ 212, 2810.5, and any above addressed violation of the applicable provisions of the Labor Code and 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 Kidango, 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.

Alvin B. Lindsay

a.lindsay@d.law

Cc: Kidango, Inc. by Certified Mail

EXHIBIT 3