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Attorneys for Plaintiffs MARTIN MARISCAL, DANIEL GARCIA, and RAFAEL ROJAS

[Additional counsel on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, DANIEL GARCIA,
RAFAEL ROJAS, JOSE HERNANDEZ,
AND LUIS VAZQUEZ individuals, on behalf
of themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; TERRY ALEXANDER, an
individual; ANDREW ALEXANDER, an
individual; and DOES 1-50, Inclusive,

Defendants.

Case No: STK-CV-UOE-2022-7290
Related with: STK-CV-UOE-2022-9998;
STK-CV-UOE-2022-8450; and
STK-CV-UOE-2022-8790

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date:

Time:

Judge: Hon. George J. Abdallah

Dept.: 10A

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1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter “Class Counsel”). I am co-counsel of record for
5 Plaintiffs MARTIN MARISCAL, DANIEL GARCIA, and RAFAEL ROJAS (hereafter “Plaintiffs”) in
6 this wage and hour class action filed against JANCO INDUSTRIES, INC., TERRY ALEXANDER,
7 and ANDREW ALEXANDER (hereinafter “Defendants”).

8 2. This declaration is being submitted in support of Plaintiffs’ motion for Preliminary
9 Approval of Class and PAGA Action Settlement.

10 **I. EXHIBITS**

11 3. Attached hereto as **Exhibit “1”** is a true and correct copy of the fully executed Stipulation
12 of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement” or “Settlement
13 Agreement”). Attached as **Exhibit “A”** to the Agreement is a true and correct copy of the proposed
14 Class Notice.

15 4. Attached hereto as **Exhibit “2”** is a true and correct copy of the Notice of Violations filed
16 with the Labor and Workforce Development Agency.

17 5. Attached hereto as **Exhibit “3”** is a true and correct copy of the proof of filing with the
18 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
19 and Motion for Preliminary Approval of Class Action and PAGA Settlement evidencing Class
20 Counsel’s compliance with California Labor Code Section 2699(1)(2).

21 6. Attached hereto as **Exhibit “4”** is a true and correct copy of the JCL Law Firm “Firm
22 Resume” detailing some of the major cases the JCL Law Firm has undertaken.

23 **II. INTRODUCTION**

24 7. The “**Net Settlement Amount**” of approximately One Million Sixty Seven Thousand
25 Dollars and Zero Cents (\$1,067,000.00) (Gross Settlement Amount minus the Service Awards,
26 Attorneys’ Fees, Attorneys’ Expenses, PAGA Payment and Claims Administration Expenses) will be
27 allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks
28 each Settlement Class Member worked during the Class Period. Agreement at §III(M)(1). The entire

1 Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the
2 Settlement Class.

3 8. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
4 the California Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at
5 arm's length. The Settlement confers substantial benefits to the California Class. **This is a cash**
6 **settlement.** Every Class Member who does not opt out of the Settlement will automatically be mailed
7 an individual settlement payment. The relief offered by the Settlement is particularly impressive when
8 viewed against the difficulties encountered by Plaintiffs pursuing wage and hour cases (*see infra*).
9 Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly
10 years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants
11 prevailing at trial.

12 9. As discussed below, the proposed Settlement satisfies all criteria for preliminary
13 settlement approval and falls within the range of reasonableness. The average Individual Settlement
14 Payments to the Settlement Class meets or exceeds awards in similar wage and hour class actions.
15 Moreover, the proposed California Class is appropriate for provisional certification. Accordingly,
16 Plaintiffs respectfully request the Court grant preliminary approval of the Settlement.

17 **III. FACTS AND PROCEDURE**

18 **A. Overview of the Litigation**

19 10. Defendant Janco Industries, Inc. ("Janco") is a concrete construction company.
20 Defendants Terry Alexander and Andrew Alexander are owners/managing members of Defendant
21 Janco Industries, Inc. Plaintiffs were employed by Janco as non-exempt employees in San Joaquin
22 County. Throughout their employment, Plaintiffs were entitled to legally compliant meal and/or rest
23 periods, minimum and regular wages. Additionally, Plaintiffs were subject to Defendant's written
24 policies and procedures.

25 11. Generally, Plaintiffs claim that Defendants failed to pay minimum wages and overtime
26 wages, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wages
27 statements, failed to pay all wages when due and failed to reimburse for mandatory business expenses.
28 Defendants forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they

1 fully complied with all applicable employment laws and raised several other significant defenses to
2 Plaintiffs' claims, including but not limited to, compliant meal and rest period policies, compliant wage
3 statements, reimbursement for all required business expenses, and payment of all wages upon
4 separation.

5 12. Plaintiffs Mariscal, Garcia, and Rojas exhausted the administrative requirements of the
6 PAGA on July 13, 2022, when they submitted a letter, by online submission to the Labor & Workforce
7 Development Agency ("LWDA") and by certified mail to Defendants, outlining the facts and theories
8 underlying their claims. On August 19, 2022, Plaintiffs Mariscal, Garcia, and Rojas filed their class
9 action complaint. On September 21, 2022, Mariscal, Garcia, and Rojas filed their separate PAGA
10 representative action complaint.

11 13. Plaintiff Hernandez exhausted the administrative requirements of PAGA on August 16,
12 2022 when he submitted a letter via online submission to the LWDA and by certified mail to
13 Defendants, outlining the facts and theories underlying his claims. On September 30, 2022, Hernandez
14 filed his class action complaint. Plaintiff Vazquez exhausted the administrative requirements of PAGA
15 on October 28, 2022 when he submitted a letter, by online submission to the LWDA and by certified
16 mail to Defendants, outlining the facts and theories underlying his claims. On October 31, 2022,
17 Vazquez filed his class action complaint.

18 14. On or about March 30, 2023, the San Joaquin County Superior Court consolidated the
19 four actions, with the Mariscal, et al. class action as the lead case. The complaints alleged the
20 following: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §17200; (2) Failure to pay
21 minimum wages; (3) Failure to pay overtime; (4) Failure to provide meal periods; (5) Failure to provide
22 rest periods; (6) Failure to provide accurate itemized statements; (7) Failure to reimburse employees for
23 required expenses; and (8) Failure to provide wages when due.

24 15. Prior to mediation, the Parties engaged in further investigation and the exchange of
25 documents and information in connection with the Action. As part of this process, Defendants provided
26 a significant sample of time records and payroll records, policies, as well as other documents and
27 information, to Class Counsel to review and analyze. On October 11, 2023, the Parties participated in
28 a full day mediation with Steve Rottman, an experienced mediator of wage and hour class and PAGA

1 actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and
2 signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
3 and negotiated a long-form settlement agreement, which is the subject of the instant motion.

4 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

5 16. Months before filing the Action, Class Counsel began their pre-filing investigation into
6 the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
7 Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment,
8 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
9 each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claims that Defendants failed to,
10 among other things, pay for all time worked, failed to provide compliant meal and rest periods, failed
11 to reimburse for all mandatory business expenses, failed to issue accurate itemized wage statements,
12 and failed to pay all wages when due.

13 17. To prepare for mediation, Class Counsel requested documents and data points to further
14 evaluate Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to
15 Class Counsel's request, Defendants produced, among other things, the time and payroll records for a
16 representative sampling of the Class Members, aggregate workweek and pay period data, and copies of
17 applicable policies, and agreements. In total, Defendants produced nearly 800 pages of pertinent
18 documents for Class Members for Class Counsel to analyze.

19 18. Class Counsel then retained the statisticians and economists at Berger Consulting Group
20 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage
21 modeling consulting services specializing in wage and hour class actions. BCG's team of financial and
22 data analysts are credentialed and experienced experts in their fields and have provided their expertise
23 on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant's time
24 and payroll data.

25 19. Prior to mediation, BCG analyzed the time and payroll data provided by Defendant to
26 assist in the development of various damage models. Among other things, BCG's analysis estimated
27 the number of workweeks, pay periods, average rate of pay, and the regular rate of pay. BCG also
28 estimated the amount of unreimbursed business expenses, unpaid wages due to off-the-clock work and

1 regular rate violations, the number of missed, late, or truncated meal and rest periods, number of missed
2 meal and rest period premiums paid during the Class Period and the amount of resulting PAGA penalties
3 for identified Labor Code violations.

4 20. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
5 determining Plaintiffs' suitability as a putative class representatives through interviews, background
6 investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims;
7 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
8 and the type of employer; (4) analyzing the Settlement Class's time and payroll data; (5) analyzing
9 Defendants' labor policies and practices; (6) researching settlements in similar cases as well as
10 outstanding issues which could affect settlement approval; (7) estimating Defendant's liability for
11 purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This
12 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
13 as well as the impediments to recovery, such as to make an independent assessment of the
14 reasonableness of the terms to which the Parties have agreed.

15 21. Class Counsel only agreed to enter the Settlement following this thorough investigation
16 and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and
17 marketplace for similar settlements, and considering the risk of significant delay and uncertainty
18 associated with litigation, and the various defenses asserted by Defendant, Class Counsel believes this
19 Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair,
20 reasonable, and adequate, the Court should preliminarily approve the Settlement.

21 **C. The Parties Settled at Mediation**

22 22. On October 11, 2023, the Parties conducted a full day of mediation with Steve Rottman.,
23 an experienced wage and hour mediator. Mediator Rottman helped manage the Parties' expectations
24 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
25 progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding
26 their respective claims and defenses, including their respective evaluation of the damages. At the
27 conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized in
28 the form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement

are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

23. The proposed Settlement Class consists of all current and former non-exempt employees employed by Defendant Janco in California during the period between August 19, 2018 to January 12, 2024. The Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior to the Mediation, there were approximately 893 Class Members who worked an estimated 61,357 workweeks through the conclusion of the Class Period.

24. Additionally, at the time of mediation, Plaintiffs' expert estimated that there were approximately 548 Aggrieved Employees who worked approximately 27,795 pay periods during the PAGA Period.

25. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Claims Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Class Payment Ratio for each Class Member. Each Class Member's Class Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Class Payment Ratios.

IV. ARGUMENT

A. The Court Should Preliminarily Approve the Class Action Settlement

26. The Parties participated in mediation with Steve Rottman, an experienced wage and hour class action mediator. Mediator Rottman managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d.

1 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
2 to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
3 negotiations were at an arm’s length, adversarial, and non-collusive. The Parties subsequently drafted
4 and negotiated a long-form settlement which is the subject of the instant motion. The Agreement is the
5 final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
6 represent a reasonable compromise of the claims at issue.

7 27. As detailed *infra*, Class Counsel conducted a very thorough investigation into the factual
8 and legal issues in dispute. Prior to mediation, Class Counsel fully assessed the nature and magnitude
9 of the claims being settled, as well as the impediments to recovery. Ultimately, Class Counsel made an
10 informed and independent assessment of the reasonableness of the terms to which the Parties have
11 agreed.

12 28. Class Counsel only agreed to enter the Settlement following this thorough investigation
13 and evaluation of Plaintiffs’ claims. Based on this investigation of the facts, applicable law, and
14 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
15 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
16 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
17 reasonable, and adequate, the Court should preliminarily approve the Settlement.

18 29. The Total Settlement Amount of \$2,000,000.00 is within the range of reasonableness. To
19 determine whether a settlement is fair and reasonable, the court should “consider enough information
20 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
21 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
22 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the
23 court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
24 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
25 explicit statement of value; [they] require [] a record which allows an understanding of the amount that
26 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
27 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
28 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might

1 have received if they had succeeded at trial.¹ Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank*
3 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc.*
4 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).).

5 30. The Total Settlement Amount of \$2,000,000.00 is fair and reasonable considering the
6 nature and magnitude of the claims being settled and the various potential impediments to recovery.
7 Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring
8 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The
9 various models were informed by Class Counsel’s investigation, including the analysis of a significant
10 sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims*
11 (excluding PAGA Penalties) ranged between \$6,122,790 (“Realistic Damages”) and \$22,434,587
12 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of
13 the claims. Thus, the Total Settlement Amount represents a recovery of between 33% (“Realistic
14 Damages”) and 9% (“Maximum Damages”) of Defendant’s class-wide exposure for damages and
15 statutory penalties – well within the recognized range of reasonableness. The following summarizes
16 Defendant’s liability exposure.

17 31. Plaintiffs allege that Defendants *miscalculated* the regular rate of pay when paying
18 overtime and redeemed sick pay. Under California law, overtime work must be paid at a rate of “no
19 less than one-and-one-half times the regular rate of pay” for non-exempt employees. Cal. Lab. Code §
20 510(a); California IWC Wage Order No. 7 § 3(A)(1). Plaintiffs assert that Defendants failed to calculate
21 additional, non-discretionary bonuses earned by Class Members into the regular rate of pay. Plaintiff’s
22 expert estimated Defendant’s maximum exposure for this claim to be \$201,466.

24 ¹ Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
25 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
26 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
27 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
28 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 32. Plaintiffs alleged that because of their rigorous work schedules the Settlement Class
2 Members were required to work through and/or take late, short, or interrupted meal and rest periods.
3 Consequently, Plaintiffs allege that they are owed meal and rest period premiums for violations that
4 occurred during the Class Period. The timecards provided by Defendants in advance of mediation
5 showed that 100% of the recorded meal periods were taken exactly on the hour or half hour and lasted
6 exactly 30 minutes in duration. Plaintiff alleged that this created a strong presumption that meal periods
7 were improperly rounded. Defendants argued that they maintained and implemented facially compliant
8 meal and rest period policies throughout the class period, and that Class Members were responsible for
9 recording their own time.

10 33. As Plaintiff does not believe the data provided by Defendants to be an accurate reflection
11 of meal period violation rates, Plaintiffs assumed between a 15% - 35% violation rate for meal and rest
12 periods. This creates realistic and maximum damages range of \$2,018,44 and \$4,709,704 for Plaintiffs'
13 meal period claims, and a damages range of \$2,018,44 and \$4,709,704 for Plaintiffs' rest period claims.
14 JCL Dec., ¶ 33.

15 34. Plaintiffs alleged that Class Members were required to use their personal cell phones,
16 vehicles, and tools in connection with their job duties for Defendants but were not reimbursed for these
17 expenses. Plaintiffs allege that Class Members could not complete their essential job duties, including,
18 but not limited to, communicating with staff and management regarding work-related matters, driving
19 to work sites, driving between work sites, and transporting equipment, without incurring these expenses.
20 Defendants maintain that necessary expenses for which reimbursements were sought were paid.
21 Plaintiff estimates Defendant's exposure for this claim to range between \$425,106 and \$2,046,464.

22 35. Plaintiffs also alleged that Defendants failed to furnish its employees with accurate
23 itemized wage statements because of the violations discussed above. Moreover, Plaintiffs allege facial
24 violations of Labor Code Section 226. Specifically, independent of the above allegations, the wage
25 statements issued to Class Members also failed to include the number of piece-rate units earned and any
26 applicable piece rate, in violation of Labor Code § 226(a)(3). Further, the wage statements issued to
27 Class Members failed to include the inclusive dates of the period for which the employee is paid, in
28

violation of Labor Code § 226(a)(6). Plaintiff's expert estimated Defendant's exposure for this claim to be \$1,498,750 in statutory penalties.

36. Plaintiffs further alleged that the Defendant's labor code violations resulted in derivative liability for waiting time penalties. Although these penalties represented Defendant's largest dollar amount of exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendants argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant's exposure for these claims ranged between \$2,880,589 and \$4,800,982.

37. Plaintiffs alleged that Defendants required Class Members to perform work off-the-clock. Specifically, Plaintiffs alleged Defendants required Class Members to perform work before and after their shifts in order to perform all the tasks required of them. Additionally, Defendants also required Class Members to load and unload vehicles prior to driving to or from their worksites. Many of the Class Members' jobsites were in the Bay Area, so the travel time to and from the company headquarters in Tracy could take as long as three or more hours per day. Despite this, Defendants told Class Members to only record the hours they are working at the worksite. Plaintiffs alleged that Defendants' superintendent or manager would also regularly record Class Members' hours worked, without including driving time and loading and unloading time. Defendants denied requiring any work performed off-the-clock, and further argued that this claim was not suitable for class treatment because individualized issues predominated. Plaintiffs estimated Defendant's realistic and maximum exposure for unpaid wages to range from \$1,116,879 to \$4,467,517.

38. Class Counsel's damage models also estimated Defendant's exposure for PAGA Payment. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure to be approximately \$6,984,550 if successful at trial.

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39. Plaintiffs' claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
512 and 226.7 (meal period violations)	\$50	27,795	100% of pay periods	\$1,389,750
226.7 (rest period violations)	\$50	27,795	100% of pay periods	\$1,389,750
510, 1197.1 (unpaid wages)	\$50	27,795	100% of pay periods	\$1,389,750
226 (wage statement violation)	\$50	27,795	100% of pay periods	\$1,389,750
203 (waiting time)	\$100	358	358 former employees	\$35,800
226 (wage statement violation)	\$50	27,795	100% of pay periods	\$1,389,750
TOTAL				\$6,984,550

40. Here, the Parties negotiated a good faith PAGA Payment in the amount of \$100,0000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$75,000.00) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$25,000.00) will be distributed to the PAGA Class Members, which is within the range of PAGA Payment approved by courts and should be approved.

B. Inherent Risks of Continued Litigation Support Preliminary Approval

41. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th

1 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
2 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
3 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
4 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
5 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
6 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
7 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
8 certification of driver meal and rest period claims based on the predominance of individual issues).
9 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
10 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
11 settlement.

12 42. Finally, continuing to litigate this action would require continued and extensive resources
13 coupled with significant Court time to proceed through trial and post-trial motions, which can often
14 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
15 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
16 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
17 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
18 668, the risk of an appeal and subsequent reversal is real.

19 43. Given the amount of the settlement here, as compared to potential value of the claims,
20 offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

21 **C. Proposed Notice Informs the Class About the Case and Settlement**

22 44. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
23 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
24 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
25 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
26 procedure and time period within which to requests for exclusions or objections to the Settlement, the
27 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
28 and scope of the Released Claims. See generally Agreement at § III(L). The Parties negotiated this

1 method to ensure delivering the most reasonable method of notice to the Class Members while ensuring
2 cost effective administration of the Settlement.

3 45. Accordingly, both the method of disseminating the Class Notice and content of the Class
4 Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
5 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
6 compromise and of the options open to dissenting class members.”).)

7 **D. The Court Should Preliminarily Approve the Class Representative Service Award**

8 46. The Settlement provides for a Class Representative Service Award of up to \$15,000 for
9 four of the Plaintiffs, and \$30,000 for Plaintiff Luis Vazquez,² subject to the Court’s approval. The
10 service award is fair and reasonable compensation for Plaintiffs efforts bringing the action, assisting
11 Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status
12 of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure
13 that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide
14 Defendants and the Released Parties a general release of all claims arising out of their employment.

15 47. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
16 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiffs
17 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
18 Representative Service Award.

19 **E. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

20 48. Class Counsel took this matter on a contingency fee basis and invested significant time
21 and expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
22 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
23 Members. Considering the positive outcome for the Class Members, and in light of the supporting
24 authority, the proposed award of Class Counsel Award is fair and reasonable.

25
26 ² The amount of the requested enhancement payments is reasonable by reference to the amounts that California courts (both federal and
27 state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Bagee v. American Residential Services,*
28 *LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail &*
Commercial Operations, LLC, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the
named plaintiffs); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000
enhancement payments to the named plaintiffs); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17,
2011) (awarding \$14,767 enhancement payment).

1 49. Plaintiffs will file a formal motion for the negotiated award of the Class Counsel Award
2 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above
3 showing is sufficient for preliminary approval of the negotiated attorneys' fees.

4 **F. The Court Should Provisionally Certify the Settlement Class**

5 50. For Settlement only, Plaintiffs contend, and Defendants do not dispute, that provisional
6 certification of the Class is appropriate.

7 51. Because all Class Members are Defendant's current and former employees, the class is
8 readily ascertainable from Defendant's regular business records, i.e., payroll records.

9 52. The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the
10 entire Settlement Class. Factually, Defendant's policies and practices apply class-wide, and Defendant's
11 liability can be determined by facts common to all members of the class. The wage and hour issues are
12 both numerous and substantial, and a class action is the most advantageous method of dealing with the
13 claims of the Settlement Class.

14 53. Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because
15 they arise from the same factual basis and are based on the same legal theories applicable to the other
16 Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the
17 Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which
18 the proposed Class Members were subject to and seek the same relief. Plaintiffs have already
19 demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation,
20 undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

21 54. Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
22 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
23 certified, and gained state court settlement approval of the same class-wide causes of action that are at
24 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
25 qualified to represent the interests of this Class.

26 55. A class action is superior to a multitude of individual lawsuits. Given the size and amount
27 of each individual claim, the Class Members likely have little incentive to litigate their claims on an
28 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each

1 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
2 adjudication.

3 **F. Class Counsel's Experience**

4 56. Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
5 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
6 certified, and gained state court settlement approval of the same class-wide causes of action that are at
7 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
8 qualified to represent the interests of this Class.

9 57. Plaintiffs and Class Members are represented by competent and experienced counsel to
10 pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique
11 Plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour
12 class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently
13 consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq.
14 (Associate Attorney), Monnett De La Torre, Esq. (Associate Attorney), Andrea Amaya, Esq. (Associate
15 Attorney), Tesla Stone (Paralegal), Jennifer Heming (Paralegal), Nicole Teller (Legal Assistant), and
16 Madelyn Uchiyama (Legal Assistant).

17 58. I am qualified to represent the Plaintiffs, the Class Members, the State of California and
18 the Aggrieved Employees. I have extensive experience with wage and hour class and representative
19 actions litigation like this matter, and employment matters in general. Additionally, I have extensive
20 complex mass tort litigation experience and complex construction product liability experience. I can,
21 will and have adequately represented the interests of the Plaintiffs, the State of California and the
22 Aggrieved Employees throughout this action.

23 59. I have represented consumers and employees in California class actions, and complex
24 multi-party product liability actions exclusively for more than 13 years. I have been in practice as a
25 plaintiffs' civil litigation attorney since April 2007.

26 60. I have significant class counsel and collective action counsel experience, as outlined in
27 the firm resume.
28

61. Since 2010, my firm has successfully resolved more than sixty-five (65) cases and recovered in excess of \$75 million on behalf of the Firm's clients.

62. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

63. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

64. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of June 2024, at San Diego, California.

JCL LAW FIRM, APC

By: Jean-Claude Lapuyade
Jean-Claude Lapuyade
Attorneys for Plaintiffs

EXHIBIT 1

JCL LAW FIRM, APC

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Attorneys for Plaintiffs Martin Mariscal, Daniel Garcia, and Rafael Rojas

[Additional Counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, DANIEL GARCIA,
JOSE HERNANDEZ, RAFAEL ROJAS, and
LUIS VAZQUEZ, individuals, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; TERRY ALEXANDER, an
individual; ANDREW ALEXANDER, an
individual; and DOES 1 through 50, Inclusive,

Defendants.

Case No.: STR-CV-UOE-2022-7290

[Action Filed August 19, 2022]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

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Attorneys for Plaintiff Luis Vazquez

This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is entered into by and between Plaintiffs MARTIN MARISCAL, DANIEL GARCIA, JOSE HERNANDEZ, RAFAEL ROJAS, and LUIS VAZQUEZ (hereinafter “Plaintiff” and/or “Plaintiffs”), individuals, on behalf of the Settlement Class, and in their representative capacity on behalf of the State of California and the Aggrieved Employees, and Defendants JANCO INDUSTRIES, INC. (“Defendant Janco”), TERRY ALEXANDER, and ANDREW ALEXANDER (hereinafter “Defendant” and/or “Defendants”):

I. DEFINITIONS

- A. “Actions” shall mean the putative class action lawsuits designated *Mariscal, et al. v. Janco Industries, Inc.*, San Joaquin County Superior Court, Case No. STR-CV-UOE-2022-7290, filed August 19, 2022, *Hernandez, et al. v. Janco Industries, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-8790, filed September 30, 2022, and *Vazquez, et al. v. Janco Industries, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-9998, filed October 31, 2022.
- B. “Claims Administration Expenses” shall mean the amount paid to the Claims Administrator from the Gross Settlement Amount for administering the Settlement pursuant to this Agreement currently estimated not to exceed \$13,000.00.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class and PAGA Action and Release of Claims.
- D. “Attorneys’ Expenses” means the award of expenses that the Court authorizes to be paid to Class Counsel for the expenses they have incurred of up to \$30,000.00.
- E. “Attorneys’ Fees” means the award of fees that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiffs and the Settlement Class in the Action not to exceed 35% of the Gross Settlement Amount, currently estimated to be \$700,000.00. Attorneys’ Fees will be divided between Class Counsel

as follows 24.6% to JCL Law Firm, APC, 24.6% to Zakay Law Group, APLC, 32.8% to Gaines & Gaines, APLC, and 18% to Drew Lewis, PC).

F. “Class” or the “Class Members” means all non-exempt employees who are or previously were employed by Defendant Janco and performed work in California during the Class Period.

G. “Class Counsel” shall mean JCL Law Firm, APC, Zakay Law Group, APLC, Gaines & Gaines, APLC, and Drew Lewis, PC.

H. “Class Data” means information regarding Class Members that Defendant Janco will in good faith compile from its records and provide to the Claims Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known address; Social Security Number; start dates and end dates of employment.

I. “Class Period” means the period beginning August 19, 2018 to January 12, 2024.

J. “Class Representatives” shall mean Plaintiffs Martin Mariscal, Daniel Garcia, Rafael Rojas, Jose Hernandez, and Luis Vazquez.

K. “Court” means the Superior Court for the State of California, County of San Joaquin currently presiding over the Action.

L. “Defendant” and/or “Defendants” shall mean Janco Industries, Inc., Terry Alexander, and Andrew Alexander.

M. “Effective Date” means the date of final approval if no objections are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the effective date of final approval will be the date the Court enters the order and judgment granting final approval of the settlement. If an appeal is taken from the Court’s overruling of objections to the settlement, then the effective date of final approval will be twenty (20) days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

1 N. "Funding Date" shall mean the date by which Defendants must pay each installment
2 of the Gross Settlement Amount to the Claims Administrator in accord with the terms
3 of this Agreement. Janco, Terry Alexander, and Andrew Alexander will each be
4 jointly and severally liable for the entire Gross Settlement Amount, which includes
5 payment for all claims, payment of the Claims Administration Expenses, Attorneys'
6 Fees, Attorneys' Expenses, Service Awards, and PAGA Payment, and in addition to
7 the Gross Settlement amount, Defendants shall include the employer share of the
8 payroll taxes which will be advised by the Claims Administrator. The Gross
9 Settlement Amount shall be paid to the Claims Administrator in three (3) installments.
10 The first installment of \$666,666.66 shall be made within fourteen (14) days of the
11 Effective Date ("First Installment"). The second installment of \$666,666.66 shall be
12 made within six months of the First Installment ("Second Installment"). The third and
13 final installment of \$666,666.67 shall be made within six months of the Second
14 Installment. Each payment shall include a proportionate share of employer payroll
15 taxes due.

16 O. "Gross Settlement Amount" means Two Million Dollars and Zero Cents
17 (\$2,000,000.00) that Defendants must pay into the Qualified Settlement Fund (QSF)
18 in connection with this Settlement, inclusive of the sum of Claims Administration
19 Expenses, Attorneys' Fees, Attorneys' Expenses, Service Awards, and the PAGA
20 Payment and *exclusive* of the employer's share of payroll tax, if any, triggered by any
21 payment under this Settlement. The Gross Settlement Amount shall be all-in with no
22 reversion to Defendants. The employer's share of payroll taxes for net wages shall
23 not be paid from the Gross Settlement Amount, and shall remain the sole
24 responsibility of Defendants.

- 1 P. "Individual Settlement Payments" means the amount payable from the Net Settlement
2 Amount to each Settlement Class Member and excludes any amounts distributed to
3 the PAGA Group Members pursuant to PAGA.
- 4 Q. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less
5 Attorneys' Fees, Attorneys' Expenses, Service Awards, PAGA Payment, and Claims
6 Administration Expenses.
- 7 R. "Notice Packet" means the notice to be provided to the Class Members by the Claims
8 Administrator in the form set forth as **Exhibit A** to this Agreement (other than
9 formatting changes to facilitate printing by the Claims Administrator).
- 10 S. "Operative Complaint" shall mean the Consolidated Complaint that shall be filed by
11 Plaintiffs within fourteen (14) days of the execution of this Agreement. The parties
12 shall stipulate and agree for leave to file a consolidated complaint consolidating all
13 parties and claims into a single pleading ("Consolidated Complaint"). The
14 Consolidated Complaint is attached hereto as **Exhibit B**.
- 15 T. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
16 Labor Code § 2698 *et seq.*
- 17 U. "PAGA Group Member(s)" means all non-exempt employees who are or previously
18 were employed by Defendant Janco and performed work in California during the
19 PAGA Period.
- 20 V. "PAGA Payment Ratio" means the respective PAGA Pay Periods during the PAGA
21 Period for each PAGA Group Member divided by the sum total of the PAGA Pay
22 Periods for all PAGA Group Members during the PAGA Period.
- 23 W. "PAGA Pay Periods," for purposes of calculating the distribution of the PAGA Group
24 Member Payment, as defined herein, means the number of pay periods of employment
25 during the PAGA Period that each PAGA Group Member worked in California.
- 26 X. "PAGA Period" means the period beginning July 13, 2021 to January 12, 2024.

1 Y. "PAGA Payment" shall mean One Hundred Thousand Dollars (\$100,000.00) to be
2 allocated from the Gross Settlement Amount, with 25% of the payment going to the
3 PAGA Group Members ("PAGA Group Payment") and 75% of the payment going to
4 the Labor and Workforce Development Agency ("LWDA Payment"). The amount of
5 the PAGA Payment is subject to Court approval pursuant to California Labor Code
6 section 2699(l). Any reallocation of the Gross Settlement Amount to increase the
7 PAGA Payment will not constitute grounds by either party to void this Agreement,
8 so long as the Gross Settlement Amount remains the same.

9 Z. "Parties" means Plaintiffs and Defendants, collectively, and "Party" shall mean either
10 Plaintiffs or Defendants, individually.

11 AA. "Payment Ratio" means the respective Workweeks for each Class Member divided
12 by the sum total Workweeks for all Class Members.

13 BB. "Plaintiff" and/or "Plaintiffs" shall mean Martin Mariscal, Daniel Garcia, Rafael
14 Rojas, Jose Hernandez, and Luis Vazquez.

15 CC. "QSF" means the Qualified Settlement Fund established, designated, and maintained
16 by the Claims Administrator to fund the Gross Settlement Amount.

17 DD. "Released Class Claims" shall mean all class claims alleged, or reasonably could have
18 been alleged based on the facts alleged in the Operative Complaint in the Action, or
19 reasonably could have been alleged based on the facts alleged in the Operative
20 Complaint, which occurred during the Class Period, and expressly excluding all other
21 claims, including claims for vested benefits, wrongful termination, unemployment
22 insurance, disability, social security, workers' compensation, and class claims outside
23 of the Class Period.

24 EE. "Released PAGA Claims" means all PAGA claims alleged in the Operative
25 Complaint and Plaintiffs' PAGA notices to the LWDA, or reasonably could have been
26 alleged based on the facts alleged in the Operative Complaint and Plaintiffs' PAGA

1 notices to the LWDA, which occurred during the PAGA Period, and expressly
2 excluding all other claims, including claims for vested benefits, wrongful termination,
3 unemployment insurance, disability, social security, workers' compensation, and
4 PAGA claims outside of the PAGA Period.

5 FF. "Released Parties" shall mean the named Defendants, together with their officers,
6 directors, employees, members, member managers, owners, affiliates and agents. The
7 Parties intend that the Released Parties shall be defined as broad as legally
8 permissible.

9 GG. "Response Deadline" means the date forty-five (45) calendar days after the Claims
10 Administrator mails Notice Packets to Class Members and the last date on which
11 Class Members may submit requests for exclusion or objections to the Settlement.

12 HH. "Service Awards" means awards in the amount of \$15,000.00 each or in an amount
13 that the Court authorizes to be paid to Class Representatives Martin Mariscal, Daniel
14 Garcia, Rafael Rojas, and Jose Hernandez, and an award in the amount of \$30,000.00
15 or in an amount the Court authorizes to be paid to Class Representative Luis Vazquez.
16 The Service Awards are in addition to the Individual Settlement Payments and the
17 individual PAGA Group Payments, in recognition of the Plaintiffs' efforts and risks
18 in assisting with the prosecution of the Action.

19 II. "Settlement" means the disposition of the Actions pursuant to this Agreement.

20 JJ. "Claims Administrator" means Apex Class Action Settlement Administration, 18
21 Technology Drive, Ste. 164, Irvine, CA 92618; Tel: 1-800-355-0700; Fax: (949)878-
22 3536. The Claims Administrator establishes, designates and maintains, as a QSF
23 under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-
24 1, into which the amount of the Gross Settlement Amount is deposited for the purpose
25 of resolving the claims of Settlement Class Members. The Claims Administrator shall
26 maintain the funds until distribution in an account(s) segregated from the assets of

Defendants and any person related to Defendants. **All accrued interest, if any, shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payments.**

KK. “Settlement Class Members” or “Settlement Class” means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement.

LL. “Workweeks” shall mean any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed and received any form of compensation from Defendant Janco.

II. RECITALS

A. On July 13, 2022, Plaintiffs Mariscal, Garcia, and Rojas filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants.

B. On August 19, 2022, Plaintiffs Mariscal, Garcia, and Rojas filed their Action, alleging claims for:

1. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
2. Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1)
3. Failure to Pay Overtime Wages (Labor Code §§ 510 *et seq.*);
4. Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order);
5. Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 516 and the applicable wage order);
6. Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204);
7. Failure to Provide Accurate Itemized Statements (Labor Code § 226 and 226.2 *et seq.*);
8. Failure to Reimburse for Required Expenses (Labor Code § 2802).

- 1 C. On August 16, 2022, Plaintiff Hernandez sent a letter, by online submission to the
2 LWDA and by certified mail to Defendants outlining the facts and theories underlying
3 his claims.
- 4 D. On September 30, 2022, Plaintiff Hernandez initiated his Action by filing a class
5 action complaint.
- 6 E. On October 28, 2022, Plaintiff Vazquez sent a letter, by online submission to the
7 LWDA and by certified mail to Defendants outlining the facts and theories underlying
8 his claims.
- 9 F. On October 31, 2022, Plaintiff Vazquez initiated his Action by filing a class action
10 complaint.
- 11 G. On March 30, 2023, the Court ordered all matters consolidated. Currently, all matters
12 are consolidated and reside with the Honorable George Abdallah Jr., Department 10A
13 of the Stockton Courthouse (the “Action”).
- 14 H. The Class Representatives believe they have claims based on alleged violations of the
15 California Labor Code, and the Industrial Welfare Commission Wage Orders, and
16 that class certification is appropriate because the prerequisites for class certification
17 can be satisfied in the Action, and this action is manageable as a PAGA representative
18 action.
- 19 I. Defendants deny any liability or wrongdoing of any kind associated with the claims
20 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
21 Representative are owed, and further contends that, for any purpose other than
22 settlement, the Action is not appropriate for class or representative action treatment.
23 Defendants contend, among other things, that at all times it complied with the
24 California Labor Code and the Industrial Welfare Commission Wage Orders.
- 25 J. The Class Representatives are represented by Class Counsel. Class Counsel
26 investigated the facts relevant to the Action, including conducting an independent

1 investigation as to the allegations, reviewing documents and information exchanged
2 through informal discovery, and reviewing documents and information provided by
3 Defendants pursuant to informal requests for information to prepare for mediation.
4 Defendants produced for the purpose of settlement negotiations certain employment
5 data concerning the Settlement Class, which Class Counsel reviewed and analyzed
6 with the assistance of an expert. Based on their own independent investigation and
7 evaluation, Class Counsel is of the opinion that the Settlement with Defendants is fair,
8 reasonable, and adequate, and is in the best interest of the Settlement Class
9 considering all known facts and circumstances, including the risks of significant
10 delay, defenses asserted by Defendants, uncertainties regarding class certification,
11 and numerous potential appellate issues. Although it denies any liability, Defendants
12 agree to this Settlement solely to avoid the inconveniences and cost of further
13 litigation. The Parties and their counsel have agreed to settle the claims on the terms
14 set forth in this Agreement.

15 K. On October 11, 2023, the Parties participated in mediation presided over by Steve
16 Rottman, Esq., an experienced mediator of wage and hour class and PAGA actions.
17 The mediation concluded with a settlement, which was subsequently memorialized in
18 the form of a Memorandum of Understanding.

19 L. This Agreement replaces and supersedes the Memorandum of Understanding and any
20 other agreements, understandings, or representations between the Parties. This
21 Agreement represents a compromise and settlement of highly disputed claims.
22 Nothing in this Agreement is intended or will be construed as an admission by
23 Defendants that the claims in the Action of Plaintiff or the Class Members have merit
24 or that Defendants bear any liability to Plaintiff or the Class on those claims or any
25 other claims, or as an admission by Plaintiff that Defendants' defenses in the Action
26 have merit.

1 M. The Parties believe that the Settlement is fair, reasonable, and adequate. The
2 Settlement was arrived at through arm's-length negotiations, taking into account all
3 relevant factors. The Parties recognize the uncertainty, risk, expense, and delay
4 attendant to continuing the Action through trial and any appeal. Accordingly, the
5 Parties desire to settle, compromise and discharge all disputes and claims arising from
6 or relating to the Action fully, finally, and forever.

7 N. The Parties agree to certification of the Class for purposes of this Settlement only. If
8 for any reason the settlement does not become effective, Defendants reserve the right
9 to contest certification of any class for any reason and reserves all available defenses
10 to the claims in the Action.

11 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

12 **III. TERMS OF AGREEMENT**

13 A. Settlement Consideration and Settlement Payments by Defendants.

14 1. Settlement Consideration. In full and complete settlement of the Action, and
15 in exchange for the releases set forth below, Defendant Janco will pay the sum
16 of the Individual Settlement Payments, the Service Awards, the Attorneys'
17 Fees and Attorneys' Expenses, PAGA Payments, and the Claims
18 Administration Expenses, as specified in this Agreement, equal to the Gross
19 Settlement Amount of Two Million Thousand Dollars (\$2,000,000.00). The
20 Parties agree that this is a non-reversionary Settlement and that no portion of
21 the Gross Settlement Amount shall revert to Defendants. Other than
22 Defendant Janco's share of employer payroll taxes and as provided in Section
23 III.A.2 below, Defendant Janco shall not be required to pay more than the
24 Gross Settlement Amount.

25 2. Class Size. Defendants represent that the Settlement Class was comprised of
26 893 individuals who collectively worked approximately 61,357 workweeks

1 (“Projected Workweeks”) during the Class Period. No later than fifteen (15)
2 days after execution of this Settlement Agreement, Defendant Janco will
3 provide the Claims Administrator with the Class Data in order to ensure the
4 Claims Administrator has sufficient time to prepare the foregoing declaration
5 prior to the filing of the motion for Preliminary Approval. If the Projected
6 Workweeks increase by more than 10% of the estimated stated herein, the
7 Gross Settlement Amount shall increase proportionally for the number of
8 workweeks over 110% of the 61,357 Projected Workweeks (67,493). For
9 example, if the total workweeks in the Class Period are 115% of 61,357, the
10 Gross Settlement Amount shall increase by 5%. The Claims Administrator
11 will provide a declaration under penalty of perjury confirming the number of
12 applicable Class Members, PAGA Group Members, PAGA Pay Periods, and
13 workweeks they worked during the applicable Class Period one week prior to
14 Plaintiffs’ deadline to file their motion for preliminary approval of the
15 settlement.

- 16 3. Settlement Payment. Defendants Janco, Terry Alexander, and Andrew
17 Alexander will each be jointly and severally liable for the entire Gross
18 Settlement Amount and shall deposit the Gross Settlement Amount into the
19 QSF, through the Claims Administrator in three (3) installments. The first
20 installment of \$666,666.66 shall be made within fourteen (14) days of the
21 Effective Date (“First Installment”). The second installment of \$666,666.66
22 shall be made six months of the First Installment (“Second Installment”). The
23 third and final installment of \$666,666.67 shall be made within six months of
24 the second installment. Any interest accrued will be added to the NSA and
25 distributed to the Settlement Class Members except that if final approval is
26 reversed on appeal, then Defendants are entitled to prompt return of the

principal and all interest accrued.

4. Defendants' Share of Payroll Taxes. Defendants' share of employer side payroll taxes is in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount on each Funding Date.

B. Release by Settlement Class Members. As of the Effective Date, subject to Defendants' full payment of the Gross Settlement Amount, and in exchange for the consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period.

C. Release by the PAGA Class Members. As of the Effective Date, subject to Defendants' full payment of the Gross Settlement Amount, and in exchange for the consideration set forth in this Agreement, the Plaintiffs, the LWDA and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the PAGA Class Members shall be precluded from bringing claims against Defendants for the Released PAGA Claims.

D. General Release by Plaintiffs. As of the Effective Date, subject to Defendants' full payment of the Gross Settlement Amount, and for the consideration set forth in this Agreement, Plaintiffs waive, release, acquit and forever discharge the Released Parties from any and all claims, whether known or unknown, which exist or may exist on either Plaintiffs' behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare

Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiffs also waive and relinquish any and all claims, rights or benefits that they may have under California Civil Code § 1542, which provides as follows:

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.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiffs warrant that each of them has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiffs have consulted with or had the opportunity to consult with counsel of Plaintiffs' choosing about this Settlement Agreement and

1 specifically about the waiver of section 1542, and that Plaintiffs understand this
2 Settlement Agreement and the section 1542 waiver, and so Plaintiffs freely and
3 knowingly enter into this Settlement Agreement. Plaintiffs further acknowledge that
4 Plaintiffs later may discover facts different from or in addition to those Plaintiffs now
5 know or believe to be true regarding the matters released or described in this
6 Settlement Agreement, and even so Plaintiffs agree that the releases and agreements
7 contained in this Settlement Agreement shall remain effective in all respects
8 notwithstanding any later discovery of any different or additional facts. Plaintiffs
9 expressly assume any and all risk of any mistake in connection with the true facts
10 involved in the matters, disputes, or controversies released or described in this
11 Settlement Agreement or with regard to any facts now unknown to Plaintiffs relating
12 thereto.

13 Representations as to No Other Claims: Neither Plaintiffs nor Class Counsel are
14 currently aware, as of the date this Agreement is fully executed, (a) unalleged claims
15 in addition to, or different from, those which are finally and forever settled and released
16 against the Released Parties by this Agreement or this settlement, and (b) unalleged
17 facts or legal theories upon which any claims or causes of action could be brought
18 against any Released Parties, except such facts and theories specifically alleged in the
19 operative Complaint in this Action. Plaintiffs and Class Counsel will further represent
20 that, other than this Action, they have no current intention of asserting any other claims
21 against any of the Released Parties in any judicial or administrative forum as of the
22 execution of the Settlement Agreement. Plaintiffs and Class Counsel will further
23 represent that, as of the signing of the Settlement Agreement, they do not currently
24 know of or represent any persons who have expressed any interest in pursuing
25 litigation or seeking any recovery against any Released Parties. This includes all
26 Plaintiffs and any claims they may have or had, including any individual claims, which

will be released in the settlement agreement and herein via Cal. Civ. Code section 1542 waiver. The Parties acknowledge, understand and agree that the representations described in this paragraph are essential to this Agreement or this settlement and that this Agreement would not have been entered into were it not for these representations.

E. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
4. Defendants fully fund the Gross Settlement Amount and comply with all payment provisions herein.

F. Nullification of Settlement Agreement. If this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Class Claims, or if Defendants fail to fully fund the Gross Settlement Amount:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

- 1 2. The conditional class certification (obtained for any purpose) shall be void *ab*
2 *initio* and of no force or effect, and shall not be admissible in any judicial,
3 administrative or arbitral proceeding for any purpose or with respect to any
4 issue, substantive or procedural;
- 5 3. None of the Parties to this Settlement will be deemed to have waived any
6 claims, objections, defenses, or arguments in the Action, including with
7 respect to the issue of class certification; and
- 8 4. If Defendants fail to fully fund the Gross Settlement Amount, Defendants
9 shall bear the sole responsibility for any cost to issue or reissue any curative
10 notice to the Settlement Class Members and all Claims Administration
11 Expenses incurred to the date of nullification.

12 G. Certification of the Settlement Class. The Parties stipulate to conditional class
13 certification of the Class for the Class Period for purposes of settlement only. In the
14 event that this Settlement is not approved by the Court, fails to become effective, or is
15 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
16 Defendants from obtaining a complete resolution of the Released Class Claims, the
17 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
18 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
19 proceeding for any purpose or with respect to any issue, substantive or procedural.

20 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
21 effect of the payments called for, and Class Members and/or PAGA Group Members
22 are not relying on any statement or representation by the Parties in this regard. Class
23 Members and/or PAGA Group Members understand and agree that they will be
24 responsible for the payment of any taxes and penalties assessed on the Individual
25 Settlement Payments and/or PAGA Group Members' individual shares of the PAGA
26 Group Payment described and will be solely responsible for any penalties or other

obligations resulting from their personal tax reporting of Individual Settlement Payments and/or PAGA Group Members' individual shares of the PAGA Group Payment.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. Class Counsel shall draft and file the motion for preliminary approval within thirty (30) calendar days of execution of this Agreement, or within the statutory timeframe as determined by the Court's setting of the preliminary approval hearing, which shall include this Settlement Agreement. Plaintiffs will provide Defendants with a draft of the Motion at least five business days

1 prior to the filing of the Motion to give Defendants an opportunity to propose changes
2 or additions to the Motion.

3 K. Claims Administrator. The Claims Administrator shall be responsible for: establishing
4 and administering the QSF; calculating, processing and mailing payments to the Class
5 Representatives, Class Counsel, LWDA, PAGA Group Members, and Class Members;
6 printing and mailing the Notice Packets to the Class Members as directed by the Court;
7 receiving and reporting the objections and requests for exclusion; calculating,
8 deducting and remitting all legally required taxes from Individual Settlement Payments
9 and distributing tax forms for the Wage Portion, the Penalties Portion and the Interest
10 Portion of the Individual Settlement Payments and/or PAGA Group Members'
11 individual shares of the PAGA Group Payment; processing and mailing tax payments
12 to the appropriate state and federal taxing authorities; providing declaration(s) as
13 necessary in support of preliminary and/or final approval of this Settlement; and other
14 tasks as the Parties mutually agree or the Court orders the Claims Administrator to
15 perform. The Claims Administrator shall keep the Parties timely apprised of the
16 performance of all Claims Administrator responsibilities by among other things,
17 sending a weekly status report to the Parties' counsel stating the date of the mailing,
18 the of number of Elections Not to Participate in Settlement it receives (including the
19 numbers of valid and deficient), and number of objections received.

20 L. Notice Procedure.

- 21 1. Class Data. No later than fifteen (15) calendar days after the Preliminary
22 Approval Date, Defendant Janco shall confirm with the Claims Administrator
23 the Class Data for purposes of preparing and mailing Notice Packets to the
24 Class Members.
- 25 2. Notice Packets.

1 a) The Notice Packet shall contain the Notice of Class Action Settlement
2 in a form substantially similar to the form attached as **Exhibit A**. The
3 Notice of Class Action Settlement shall inform Class Members and
4 PAGA Group Members that they need not do anything in order to
5 receive an Individual Settlement Payment and/or PAGA Group
6 Members' individual shares of the PAGA Group Payment and to keep
7 the Claims Administrator apprised of their current mailing address, to
8 which the Individual Settlement Payments and/or PAGA Group
9 Members' individual shares of the PAGA Group Payment will be
10 mailed following each Funding Date. The Notice of Class Action
11 Settlement shall set forth the release to be given by all members of the
12 Class who do not request to be excluded from the Settlement Class
13 and/or PAGA Group Members in exchange for an Individual
14 Settlement Payment and/or PAGA Group Members' individual shares
15 of the PAGA Group Payment, the number of Workweeks worked by
16 each Class Member during the Class Period and PAGA Period, if any,
17 and the estimated amount of their Individual Settlement Payment if
18 they do not request to be excluded from the Settlement and each
19 PAGA Group Members' share of the PAGA Group Payment, if any.
20 The Claims Administrator shall use the Class Data to determine Class
21 Members' Workweeks and PAGA Workweeks. The Notice will also
22 advise the PAGA Group Members that they will release the Released
23 PAGA Claims and will receive their share of the PAGA Group
24 Payment regardless of whether they request to be excluded from the
25 Settlement.

b) The Notice Packet’s mailing envelope shall include the following language: “IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE.”

3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the Claims Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than twenty-one (21) calendar days receipt of the Class Data the Claims Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S. Mail and electronic mail. The Claims Administrator shall exercise its best judgment to determine the current mailing address for each Class Member. The address identified by the Claims Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member.

4. Undeliverable Notices. Any Notice Packets returned to the Claims Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. If no forwarding address is provided, the Claims Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Claims Administrator. In addition, if any Notice Packets, which are addressed to Class Members who are currently employed by Defendant Janco, are returned to the Claims Administrator as non-delivered and no forwarding

1 address is provided, the Claims Administrator shall notify Defendants.
2 Defendants will request that the currently employed Class Member provide a
3 corrected address and transmit to the Claims Administrator any corrected
4 address provided by the Class Member. Class Members who received a re-
5 mailed Notice Packet shall have their Response Deadline extended fifteen (15)
6 days from the original Response Deadline.

7 5. Disputes Regarding Individual Settlement Payments. Class Members will
8 have the opportunity, should they disagree with Defendant Janco's records
9 regarding the start and end dates of employment, to provide documentation
10 and/or an explanation to show contrary dates. If there is a dispute, the Claims
11 Administrator will consult with the Parties to determine whether an
12 adjustment is warranted. The Claims Administrator shall determine the
13 eligibility for, and the amounts of, any Individual Settlement Payments under
14 the terms of this Agreement. The Claims Administrator's determination of
15 the eligibility for and amount of any Individual Settlement Payment shall be
16 binding upon the Class Member and the Parties.

17 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
18 by the Claims Administrator concerning the administration of the Settlement
19 will be presented to the mediator for resolution. Before any such involvement
20 of the mediator, counsel for the Parties will confer in good faith to resolve the
21 disputes without the necessity of involving the mediator.

22 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
23 Packet shall state that Class Members who wish to exclude themselves from
24 the Settlement must submit a written request for exclusion to the Claims
25 Administrator by the Response Deadline. The written request for exclusion
26 (1) must contain the name, address, and the last four digits of the Social

1 Security number of the person requesting exclusion; (2) must be signed by the
2 Class Member; (3) must be postmarked or fax stamped by the Response
3 Deadline and returned to the Claims Administrator at the specified address or
4 fax telephone number; and (4) contain a typewritten or handwritten notice
5 stating in substance that he or she wishes to be excluded from the settlement
6 of the class action lawsuit entitled *Mariscal, et al. v. Janco Industries, Inc.*,
7 currently pending in Superior Court of San Joaquin, Case No. STR-CV-UOE-
8 2022-7290. The request for exclusion will not be valid if it is not timely
9 submitted, if it is not signed by the Class Member, or if it does not contain the
10 name and address and last four digits of the Social Security number of the
11 Class Member. The date of the postmark on the mailing envelope or fax stamp
12 on the request for exclusion shall be the exclusive means used to determine
13 whether the request for exclusion was timely submitted. Any Class Member
14 who submits a timely request for exclusion shall be excluded from the
15 Settlement Class will not be entitled to an Individual Settlement Payment and
16 will not be otherwise bound by the terms of the Settlement or have any right
17 to object, appeal or comment thereon. However, any Class Member that
18 submits a timely request for exclusion that is also a member of the PAGA
19 Group Members will still receive his/her pro rata share of the PAGA
20 Settlement, as specified below, and in consideration, will be bound by the
21 Release by the PAGA Group Members as set forth herein. Settlement Class
22 Members who fail to submit a valid and timely request for exclusion on or
23 before the Response Deadline shall be bound by all terms of the Settlement
24 and any final judgment entered in this Action if the Settlement is approved by
25 the Court. No later than ten (10) calendar days after the Response Deadline,
26 the Claims Administrator shall provide counsel for the Parties with a final list

1 of the Class Members who have timely submitted timely requests for
2 exclusion. At no time shall any of the Parties or their counsel seek to solicit or
3 otherwise encourage members of the Class to submit requests for exclusion
4 from the Settlement.

- 5 8. Objections. The Notice of Class Action Settlement contained in the Notice
6 Packet shall state that Class Members who wish to object to the Settlement
7 may submit to the Claims Administrator a written statement of objection
8 (“Notice of Objection”) by the Response Deadline. The postmark date of
9 mailing shall be deemed the exclusive means for determining that a Notice of
10 Objection was served timely. The Notice of Objection, if in writing, must be
11 signed by the Settlement Class Member and state: (1) the case name and
12 number; (2) the name of the Settlement Class Member; (3) the address of the
13 Settlement Class Member; (4) the last four digits of the Settlement Class
14 Member’s Social Security number; (5) the basis for the objection; and (6) if
15 the Settlement Class Member intends to appear at the Final
16 Approval/Settlement Fairness Hearing. Class Members who fail to make
17 objections in writing in the manner specified above may still make their
18 objections orally at the Final Approval/Settlement Fairness Hearing with the
19 Court’s permission. Settlement Class Members will have a right to appear at
20 the Final Approval/Settlement Fairness Hearing to have their objections heard
21 by the Court regardless of whether they submitted a written objection. At no
22 time shall any of the Parties or their counsel seek to solicit or otherwise
23 encourage Class Members to file or serve written objections to the Settlement
24 or appeal from the Order and Final Judgment. Class Members who submit a
25 written request for exclusion may not object to the Settlement. Class Members
26 may not object to the PAGA Settlement.

1 M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
2 pay the Gross Settlement Amount plus the employer's share of payroll taxes as
3 mandated by law within the time specified hereinabove on each Funding Date.

4 1. Calculation of Individual Settlement Payments. Individual Settlement
5 Payments shall be paid from the Net Settlement Amount and shall be paid
6 pursuant to the formula set forth herein. Using the Class Data, the Claims
7 Administrator shall add up the total number of Workweeks for all Class
8 Members. The respective Workweeks for each Class Member will be divided
9 by the total Workweeks for all Class Members, resulting in the Payment Ratio
10 for each Class Member. Each Class Member's Payment Ratio will then be
11 multiplied by the Net Settlement Amount to calculate each Class Member's
12 estimated Individual Settlement Payment. Each Individual Settlement
13 Payment will be reduced by any legally mandated employee tax withholdings
14 (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class
15 Members who submit valid and timely requests for exclusion will be
16 redistributed to Settlement Class Members who do not submit valid and timely
17 requests for exclusion on a pro rata basis based on their respective Payment
18 Ratios.

19 2. Calculation of Individual Payments to the PAGA Group Members. Using the
20 Class Data, the Claims Administrator shall add up the total number of PAGA
21 Pay Periods for all PAGA Group Members during the PAGA Period. The
22 respective PAGA Pay Periods for each PAGA Group Member will be divided
23 by the total PAGA Pay Periods for all PAGA Group Members, resulting in
24 the "PAGA Payment Ratio" for each PAGA Group Member. Each PAGA
25 Group Members's PAGA Payment Ratio will then be multiplied by the PAGA
26

Group Payment to calculate each PAGA Group Members's estimated share of the PAGA Group Payment.

3. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as 20% wages ("Wage Portion") and 80% penalties and pre-judgment interest ("Penalties and Interest Portion"). The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and the Penalties and Interest Portion and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form 1099 issued by the Settlement Agreement.

4. Allocation of PAGA Group Payments. For tax purposes, PAGA Group Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the PAGA Payment made to Settlement Class Members and/or PAGA Group Members under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies are actually received by the

1 Settlement Class Members. It is the intent of the Parties that Individual
2 Settlement Payments and individual shares of the PAGA Payment provided for
3 in this Settlement agreement are the sole payments to be made by Defendants to
4 Settlement Class Members and/or PAGA Group Members in connection with
5 this Settlement Agreement, with the exception of Plaintiffs, and that the
6 Settlement Class Members and/or PAGA Group Members are not entitled to any
7 new or additional compensation or benefits as a result of having received the
8 Individual Settlement Payments and/or their shares of the PAGA Group
9 Payment.

10 7. Mailing. Proportionate Individual Settlement Payments and PAGA Group
11 Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class
12 Members' and/or PAGA Group Members' last known mailing address no later
13 than thirty (30) days after each Funding Date.

14 8. Expiration. Any checks issued to Settlement Class Members and PAGA
15 Group Members shall remain valid and negotiable for one hundred and eighty
16 (180) days from the date of their issuance. If a Settlement Class Member
17 and/or PAGA Group Member does not cash his or her settlement check within
18 90 days, the Claims Administrator will send a letter to such persons, advising
19 that the check will expire after the 180th day, and invite that Settlement Class
20 Member and/or PAGA Group Member to request reissuance in the event the
21 check was destroyed, lost or misplaced. In the event an Individual Settlement
22 Payment and/or PAGA Group Members' individual share of the PAGA
23 Payment check has not been cashed within one hundred and eighty (180) days,
24 all funds represented by such uncashed checks, plus any interest accrued
25 thereon, shall be paid to the Community Law Project, a Cy Pres, pursuant to
26 California Code of Civil Procedure section 384.

9. Service Awards. In addition to the Individual Settlement Payments as Settlement Class Members and their individual shares of the PAGA Group Payment, Plaintiffs will apply to the Court for an award of not more than \$15,000.00 as Service Awards for Plaintiffs Martin Mariscal, Daniel Garcia, Rafael Rojas and Jose Hernandez, and for an award of not more than \$30,000.00 as the Service Award for Plaintiff Luis Vazquez. Defendants will not oppose Service Awards of not more than \$15,000.00 for Plaintiffs Martin Mariscal, Daniel Garcia, Rafael Rojas, and Jose Hernandez, and a Service Award of not more than \$30,000.00 for Plaintiff Luis Vazquez. The Claims Administrator shall pay proportionate shares of the Service Awards, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiffs from the Gross Settlement Amount no later than thirty (30) days after each Funding Date. Any portion of the requested Service Award that is not awarded to the Class Representatives shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Claims Administrator shall issue an IRS Form 1099 — MISC to Plaintiffs for their Service Awards. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their Service Awards and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Awards. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Service Awards. If the Court reduces or does not approve the requested Service Awards, Plaintiffs shall not have the right to revoke the Settlement, and it will remain binding.

10. Attorneys' Fees and Attorneys' Expenses. Defendant understands Class Counsel will file a motion for or Attorneys' Fees not to exceed 35% of the

Gross Settlement Amount currently estimated to be \$700,000.00 *and* Attorneys' Expenses not to exceed Thirty Thousand Dollars (\$30,000.00). Any awarded Attorneys' Fees and Attorneys' Expenses shall be paid from the Gross Settlement Amount. Any portion of the requested Attorneys' Fees and/or Attorneys' Expenses that are not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Claims Administrator shall allocate and pay a proportionate share of the Attorneys' Fees and Attorneys' Expenses to Class Counsel from the Gross Settlement Amount no later than thirty (30) days after each Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Claims Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Attorneys' Fees, Plaintiffs and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. PAGA Payment. One Hundred Thousand Dollars (\$100,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Payment"). The Claims Administrator shall pay a proportionate share of the LWDA Payment, comprised of seventy-five percent (75%) of the PAGA Payment (\$75,000.00), to the California Labor and Workforce Development Agency no later than thirty (30) days after each Funding Date. The PAGA Group Payment, comprised of twenty-five percent (25%) of the PAGA Payment (\$25,000.00), will be distributed to the PAGA Group Members as described in this Agreement. For purposes of distributing the PAGA Group

Payment, each PAGA Group Member shall receive their pro-rata share of the PAGA Group Payment using the PAGA Payment Ratio as defined above.

12. Claims Administration Expenses. The Claims Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Claims Administration Expenses is \$13,000.00. The Claims Administrator shall be paid a proportionate share of the Claims Administration Expenses no later than thirty (30) days after each Funding Date.

N. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty (20) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Service Awards, the Attorneys' Fees and Attorneys' Expenses, the PAGA Payment, and the Claims Administration Expenses. Plaintiffs will provide Defendants with a draft of the Motion at least five business days prior to the filing of the Motion to give Defendants an opportunity to propose changes or additions to the Motion.

1. Declaration by Claims Administrator. No later than seven (7) days after the Response Deadline, the Claims Administrator shall submit a declaration in support of Plaintiffs' motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the full names of those Class Members who requested exclusion from the Settlement, the number of objections received, the amount of the average, highest, and lowest Individual Settlement Payments, the amount of the average, highest, and lowest PAGA Group Payments, the Claims

Administration Expenses, and any other information as the Parties mutually agree or the Court orders the Claims Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendants to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court, as stated above. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

Q. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibit.

- 1 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate
3 this Agreement and to take all appropriate Action required or permitted to be taken by
4 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
5 documents required to effectuate the terms of this Agreement. The persons signing
6 this Agreement on behalf of Defendants represents and warrants that he/she is
7 authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and
8 warrant that they are authorized to sign this Agreement and that they have not assigned
9 any claim, or part of a claim, covered by this Settlement to a third-party.
- 10 T. No Public Comment: The Parties and their counsel agree that they will not issue any
11 press releases, initiate any contact with the press, respond to any press inquiry, or have
12 any communication with the press about the fact, amount or terms of the Settlement
13 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
14 of its terms for any marketing or promotional purposes. Further, Class Counsel will
15 not include, reference, or use the Settlement Agreement for any marketing or
16 promotional purposes, either before or after the Motion for Preliminary Approval is
17 filed. Except a may be necessary to enforce the provisions of this Agreement, or
18 otherwise prohibited by law, including California Code of Civil Procedure section
19 1001-1002, and Cal. Gov. Code §§ 12900 *et seq.*, Plaintiffs and Class Counsel shall
20 not directly or indirectly disclose the facts, Gross Settlement Amount, or terms of this
21 individual, class and representative settlement to the public or to anyone. Nothing
22 herein will restrict Class Counsel from including publicly available information
23 regarding this settlement in future judicial submissions regarding Class Counsel's
24 qualifications and experience for adequacy as attorneys for a putative class or
25 representative group to justify an award of attorney fees. Nothing shall prevent the
26

1 communication by Class Counsel or any parties to respond to specific questions
2 received from the Settlement Class Members regarding the terms of the Agreement.

3 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
4 to the benefit of, the successors or assigns of the Parties, as previously defined.

5 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
6 shall be governed by and interpreted according to the laws of the State of California.

7 W. Counterparts. This Agreement may be executed in one or more counterparts. All
8 executed counterparts and each of them shall be deemed to be one and the same
9 instrument provided that counsel for the Parties to this Agreement shall exchange
10 among themselves copies or originals of the signed counterparts.

11 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
12 is a fair, adequate, and reasonable settlement of this Action and have arrived at this
13 Settlement after extensive arms-length negotiations, taking into account all relevant
14 factors, present and potential.

15 Y. Continuing Jurisdiction of the Court. The Parties agree that the Court shall retain
16 continuing jurisdiction over this case under CCP Section 664.6 to ensure the
17 continuing implementation of the provisions of this settlement and that the time within
18 which to bring this action to trial under CCP Section 583.310 shall be extended from
19 the date of signing this agreement by all parties until the entry of the final approval
20 order and judgement or if not entered the date this agreement shall no longer be of any
21 force or effect

22 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
23 the Court shall first attempt to construe the provisions valid to the fullest extent
24 possible consistent with applicable precedents so as to define all provisions of this
25 Agreement valid and enforceable.

1 AA. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
2 certification for purposes of this settlement only.

3 BB. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
4 Released Class Claims have merit and give rise to liability on the part of Defendants.
5 Defendants claim that the Released Class Claims have no merit and do not give rise to
6 liability. This Agreement is a compromise of disputed claims. Nothing contained in
7 this Agreement and no documents referred to and no action taken to carry out this
8 Agreement may be construed or used as an admission by or against the Defendants or
9 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other
10 than as may be specifically set forth herein, each Party shall be responsible for and
11 shall bear its/their own attorney's fees and costs.

12 CC. Default; Notice; Cure; Acceleration; Time is of the Essence. Time is of the essence
13 with respect to all provisions of this Agreement. If Defendants fail to timely make any
14 payments due hereunder, they shall be in default of their obligations. Plaintiffs shall
15 thereafter give notice of default and Defendants must cure said default within ten (10)
16 calendar days thereof. In the event of an uncured default, all unpaid amounts shall be
17 due and payable with interest at the legal rate from the date of default.

18
19 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

20 DATED: 04/01/2024


Martin Mariscal (Apr 1, 2024 17:09 PDT)

Martin Mariscal

21 DATED: 04/02/2024


Daniel Garcia (Apr 2, 2024 06:50 PDT)

Daniel Garcia

22 DATED: 04/02/2024


Rafael Rojas (Apr 2, 2024 10:31 PDT)

Rafael Rojas

23 DATED: 03 / 20 / 2024


Jose Hernandez

Jose Hernandez

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DATED: _____
Luis Vazquez

IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: _____
JANCO INDUSTRIES, INC.
Terry Alexander; Andrew Alexendar
Printed Name
CEO/CFO; Vice President
Title

DATED: March 26, 2024 | 12:23 PM PDT
Terry Alexander CEO/CFO
DocuSigned by: Terry Alexander
Dated: March 26, 2024 | 10:14 AM EDT
Andrew Alexander Vice President
DocuSigned by: Andrew Alexander

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: _____
JCL LAW FIRM, A.P.C.
By: _____
Attorneys for Plaintiff and the Settlement Class Members

DATED: _____
ZAKAY LAW GROUP, APLC
By: _____
Attorneys for Plaintiff and the Settlement Class Members

1 DATED: 04 / 01 / 2024


Luis Vazquez

4 IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

6 DATED: _____

JANCO INDUSTRIES, INC.

8 Printed Name

10 Title

11 DATED: _____

Terry Alexander

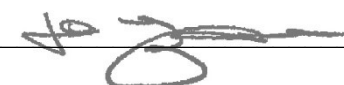
13 DATED: _____

Andrew Alexander

15 IT IS SO AGREED AS TO FORM BY COUNSEL:

16 DATED: March 28, 2024

JCL LAW FIRM, A.P.C.

18 By: 

Attorneys for Plaintiff and the Settlement Class Members

21 DATED: March 28, 2024

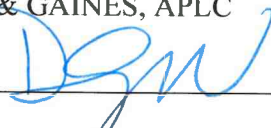
ZAKAY LAW GROUP, APLC

23 By: 

Attorneys for Plaintiff and the Settlement Class Members

1 DATED: 3/20/2024

GAINES & GAINES, APLC

2 By: 

3 Attorneys for Plaintiff and the Settlement Class
4 Members

5 DATED: 04/01/2024

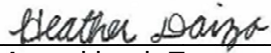
DREW LEWIS, PC

7 By: 

8 Attorneys for Plaintiff and the Settlement Class
9 Members

10 DATED: 4-2-2024

GORDON REES SCULLY MANSUKHANI, LLP

12 By: 

Roger M. Mansukhani, Esq.

13 Bimali Walgampaya, Esq.

14 Heather T. Daiza, Esq.

15 Attorney for Defendants

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Mariscal, et al. v. Janco Industries, Inc., San Joaquin County Superior Court Case No. STR-CV-UOE-2022-7290)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Claims Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Claims Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Even if you exclude yourself, you will still be a PAGA Group Member subject to the PAGA settlement. Instructions are set forth below.
Object	You may object by writing to the Court about why you believe the settlement should not be approved or by appearing in court. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Joaquin (the “Court”) has been reached between Plaintiff Martin Mariscal, Plaintiff Daniel Garcia, Plaintiff Jose Hernandez, Plaintiff Rafael Rojas, and Plaintiff Luis Vazquez (“Plaintiffs”) and Defendant Janco Industries, Inc., Defendant Terry Alexander, and Defendant Andrew Alexander (“Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are or previously were employed by Janco and performed work in California during the period between August 19, 2018 to January 12, 2024 (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

In this lawsuit, which was consolidated on March 30, 2023, Plaintiffs claim that Defendants (1) failed to pay all wages due; (2) failed to provide legally compliant meal and rest periods, or compensation in lieu thereof; (3) failed to reimburse for all business-related expenses; (4) failed to issue accurately itemized wage statements; (5) failed to timely pay all wages due at the separation of employment; (6) violated California's Unfair Competition laws; and (7) that these violations entitle Plaintiffs to recovery civil penalties on behalf of the State of California under the Private Attorneys General Act ("PAGA"). Currently, this matter resides with the Honorable George Abdallah Jr., Department 10 of the Stockton Courthouse.

Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representatives are owed, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendants contend, among other things, that at all times it complied with the California Labor Code, the California Business & Professions Code, and the Industrial Welfare Commission Wage Orders.

On October 11, 2023, the Parties participated in an all-day mediation with Steve Rottman, an experienced mediator of wage and hour class actions. The mediation concluded with a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. The Court granted preliminary approval of the Settlement on **MONTH XX, 202X**. At that time, the Court also preliminarily approved the Plaintiffs to serve as the Class Representatives, and the law firms of JCL Law Firm, APC, Zakay Law Group, APC, Gaines & Gaines, APLC, and Drew Lewis, PC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an amount of Two Million Dollars (\$2,000,000.00) (the "Gross Settlement Amount") to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to Settlement Class Members, PAGA Group Members, Attorneys' Fees, Attorneys' Expenses, Claims Administration Expenses, the PAGA Payment, and the Service Awards to the Plaintiffs.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Claims Administrator in three installments, commencing 14 days after the Final Judgment, and completed a year after Final Judgment. "Final" means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Claims Administration Expenses. The amount paid to the Claims Administrator from the Gross Settlement Amount for administering the Settlement currently estimated not to exceed Thirteen Thousand Dollars (\$13,000.00) for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Attorneys' Expenses. An award of Attorneys' Fees that the Court authorizes to be paid to Class Counsel for the services they rendered to Plaintiff and the Settlement Class in the Action,

not to exceed one-third of the Gross Settlement Amount, currently estimated to be Seven Hundred Thousand Dollars (\$700,000.00), and an award Attorneys' Expenses that the Court authorizes to be paid to Class Counsel for the expenses they have incurred up to Thirty Thousand Dollars (\$30,000.00) for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Service Awards. Service Awards in the amount of Fifteen Thousand Dollars (\$15,000.00) to Plaintiffs Mariscal, Garcia, Rojas, and Hernandez and in the amount of Thirty Thousand Dollars (\$30,000.00) to Plaintiff Vazquez, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Payment. A payment of One Hundred Thousand Dollars (\$100,000.00) to be allocated from the Gross Settlement Amount, relating to Plaintiffs' claim under the Private Attorneys General Act ("PAGA"), with 25% of the payment (\$25,000.00) going to the PAGA Group Members ("PAGA Group Payment") and 75% of the payment (\$75,000.00) going to the State of California's Labor and Workforce Development Agency ("LWDA") ("LWDA Payment")
- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Attorneys' Fees, Attorneys' Expenses, the Service Awards, the PAGA Payment, and the Claims Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed and received any form of compensation from Defendants.
- Calculation of PAGA Group Payments to PAGA Group Members. The PAGA Group Payment shall be distributed to the PAGA Group Members irrespective of whether they exclude themselves or opt-out. The PAGA Group Payment will be divided by the total number of pay periods worked by all PAGA Group Members during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective PAGA Group Member during the PAGA Period. "PAGA Group Members" means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the PAGA Period. The PAGA Period means the period between July 13, 2021, to January 12, 2024.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Claims Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty percent (20%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Individual Settlement Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Payment paid to PAGA Group Members, and each PAGA Group Member will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The Individual Settlement Payments and PAGA Group Payments made to Settlement Class Members and/or PAGA Group Members under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date, subject to Defendants' full payment of the Gross Settlement Amount, and in exchange for the consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members release the named Defendants, together with their officers, directors, employees, members, member managers, owners, affiliates and agents (the "Released Parties") from the all class claims alleged, or reasonably could have been alleged based on the facts alleged in the Operative Complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period (the "Released Class Claims"). .

Released PAGA Claims. As of Effective Date, subject to Defendants' full payment of the Gross Settlement Amount, and in exchange for the consideration set forth in this Agreement, the Plaintiffs, the LWDA and the State of California release the Released Parties from all PAGA claims alleged, or reasonably could have been alleged, in the Operative Complaint and Plaintiffs' PAGA notices to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period (the "PAGA Released Claims"). As a result of this release, the PAGA Class Members shall be precluded from bringing claims against Defendants for the Released PAGA Claims.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendants' records reflect that you have << ____ >> Workweeks worked during the Class Period (August 19, 2018 to January 12, 2024).

Based on this information, your estimated Individual Settlement Payment is << ____ >>.

Defendants' records reflect that you have << ____ >> pay periods worked during the PAGA Period (July 13, 2021 to January 12, 2024).

Based on this information, your estimated PAGA Group Payment is << ____ >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Claims Administrator at the address

provided in this Notice no later than _____ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

6. How can I get a payment? When will I be paid?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Claims Administrator. The Claims Administrator is: Apex Class Action Settlement Administration.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Claims Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the Claims Administrator's website at <https://www.apexclassaction.com/>.

If the Court approves the settlement, and if you do not opt out, your Individual Settlement Payment and PAGA Group Payment will be received in three payments, which are expected to take place on _____ [approximately 45 days after Final Approval Hearing], _____ [approximately 225 days after Final Approval Hearing], and _____ [approximately 405 days after Final Approval Hearing].

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows:** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the PAGA Group Payment.

To opt out, you must submit to the Claims Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Claims Administrator is Apex Class Action LLC, 18 Technology Drive, Ste. 164, Irvine, CA 92618. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Mariscal, et al. v. Janco Industries, Inc.*, currently pending in Superior Court of San Joaquin, Case No. STR-CV-UOE-2022-7290. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Mariscal, et al. v. Janco Industries, Inc., San Joaquin County Superior Court Case No. STR-CV-UOE-2022-7290*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Claims Administrator no later than [REDACTED]. The address for the Claims Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
E-Mail: shani@zakaylaw.com

Counsel for Defendant:

Roger M. Masukhani, Esq.
Bimali Walgampaya, Esq.
Heather T. Daiza, Esq.
Gordon Rees Scully Mansukhani, LLP
101 W. Broadway, Suite 2000,
San Diego, CA 92101
Tel.: (619) 696-6700
Fax: (619) 696-7124

Class Counsel:

Daniel Gaines, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd.,
Suite 100
Westlake Village, CA 91362
Tel.: (818) 703-8985
Fax: (818) 703-8984
E-Mail: daniel@gaineslawfirm.com

Class Counsel:

Drew Lewis, Esq.
Drew Lewis, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Tel: (833) 600-7400
E-Mail: drew@drewlewis.law

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on [REDACTED], at the San Joaquin County Superior Court, Department 10A, located at 180 E. Weber Avenue, Stockton, CA 95202 before Judge George Abdallah Jr. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Claims Administrator at 1-800-355-0700 or write to *Mariscal, et al. v. Janco Industries, Inc.*, currently pending in San Joaquin County Superior Court Case No. *STR-CV-UOE-2022-7290*, Claims Administrator, c/o Apex Class Action Settlement Administration.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the website listed in this notice.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Claims Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Claims Administrator shall pay all funds from such uncashed checks to the Community Law Project, a Cy Pres, pursuant to California Code of Civil Procedure section 384. If your check is lost or misplaced, you should contact the Claims Administrator immediately to request a replacement.

EXHIBIT B

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
Andrea A. Amaya Silva (State Bar #348080)
Kendall Garald (State Bar #351773)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
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jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com
aamaya@jcl-lawfirm.com
kgarald@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Dr., Ste 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFFS MARTIN MARISCAL, DANIEL GARCIA, and RAFAEL ROJAS
(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, DANIEL GARCIA,
RAFAEL ROJAS, JOSE HERNANDEZ, AND
LUIS VAZQUEZ individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; TERRY ALEXANDER, an
individual; ANDREW ALEXANDER, an
individual; and DOES 1-50, Inclusive,

Defendants.

Case No: STK-CV-UOE-2022-7290
Related with: STK-CV-UOE-2022-9998;
STK-CV-UOE-2022-8450; and
STK-CV-UOE-2022-8790

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- 1) UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
221, 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF CAL. LAB. CODE §§
510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF

FILED
SUPERIOR COURT-STOCKTON

2024 MAR 28 AM 11:35

STEPHANIE LOHRER, CLERK
McKENNA OFFHAUS

BY  DEPUTY

- CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
 - 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
 - 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
 - 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
 - 9) FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT CAL. LAB. CODE §§ 204 AND 210.
 - 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

DEMAND FOR A JURY TRIAL

GAINES & GAINES

Daniel Gaines, Esq.

Alex Katofsky, Esq.

4550 East Thousand Oaks Blvd, Suite 100

Westlake Village, CA 91362

T: (866) 400-4450

daniel@gaineslawfirm.com

alex@gaineslawfirm.com

Attorneys for PLAINTIFF JOSE HERNANDEZ

DREW LEWIS, PC

Drew Lewis, Esq.

2999 Douglas Blvd, Suite 180

Roseville, CA 95661

T: (833) 600-7400

drew@drewlewis.law

Attorneys for PLAINTIFF LUIS VAZQUEZ

1 PLAINTIFFS MARTIN MARISCAL, DANIEL GARCIA, RAFAEL ROJAS, JOSE
2 HERNANDEZ, AND LUIS VAZQUEZ (“PLAINTIFFS”), individuals, on behalf of themselves
3 and all other similarly situated current and former employees, alleges on information and belief,
4 except for their own acts and knowledge which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant JANCO INDUSTRIES, INC. (“DEFENDANT JANCO
7 INDUSTRIES”) is a California corporation that at all relevant times mentioned herein conducted
8 and continues to conduct substantial and regular business in the state of California.

9 2. Defendant TERRY ALEXANDER (“DEFENDANT TERRY ALEXANDER”) is
10 an individual that at all relevant times mentioned herein conducted and continues to conduct
11 substantial and regular business in the state of California.

12 3. Defendant ANDREW ALEXANDER (“DEFENDANT ANDREW
13 ALEXANDER”) is an individual that at all relevant times mentioned herein conducted and
14 continues to conduct substantial and regular business in the state of California.

15 4. Defendant Janco Industries, Inc., and Defendant Terry Alexander, and Defendant
16 Andrew Alexander were the joint employers of PLAINTIFF as evidenced by the documents
17 issued to PLAINTIFF and by the company PLAINTIFF performed work for respectively and are
18 therefore jointly responsible as employers for the conduct alleged herein as “DEFENDANTS”
19 and/or “DEFENDANT.”

20 5. DEFENDANT provides production machining services in the State of California,
21 including in the county of San Joaquin, where PLAINTIFFS worked.

22 6. PLAINTIFF Martin Mariscal (“PLAINTIFF Mariscal”) was employed by
23 DEFENDANT in California from February of 2022 to May of 2022 as a non-exempt employee,
24 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
25 minimum and overtime wages due for all time worked.

26 7. PLAINTIFF Daniel Garcia (“PLAINTIFF Garcia”) was employed by
27 DEFENDANT in California from February of 2022 to May of 2022 as a non-exempt employee,
28

1 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
2 minimum and overtime wages due for all time worked.

3 8. PLAINTIFF Rafael Rojas (“PLAINTIFF Rojas”) was employed by
4 DEFENDANT in California from February of 2022 to May of 2022 as a non-exempt employee,
5 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
6 minimum and overtime wages due for all time worked.

7 9. PLAINTIFF Jose Hernandez (“PLAINTIFF Hernandez”) was employed by
8 DEFENDANT in California from July of 2020 to February of 2022 as a non-exempt employee,
9 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
10 minimum and overtime wages due for all time worked.

11 10. PLAINTIFF Luis Vazquez (“PLAINTIFF Vazquez”) was employed by
12 DEFENDANT in California from July 2015 to 2016 and 2017 to September 2022 as a non-exempt
13 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
14 payment of minimum and overtime wages due for all time worked.

15 11. On or about March 30, 2023, this Court ordered consolidated the following matters
16 by the PLAINTIFFS Daniel Garcia, Rafael Rojas, Jose Hernandez, and Luis Vasquez: STK-CV-
17 UOE-2022-7290, STK-CV-UOE-2022-9998, STK-CV-UOE-2022-8450, and STK-CV-UOE-
18 2022-8790. The intent of this First Amended Complaint is to consolidate all of the allegations
19 from all of the complaints into this First Amended Complaint.

20 12. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFFS who therefore sues these Defendants by such fictitious names
23 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
24 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
25 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
26 alleges, that the Defendant named in this Complaint, including DOES 1 through 50, inclusive,
27 (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some
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1 manner for one or more of the events and happenings that proximately caused the injuries and
2 damages hereinafter alleged.

3 13. The agents, servants, and/or employees of the Defendants and each of them acting
4 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as
5 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
8 Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
10 Defendants' agents, servants and/or employees.

11 14. DEFENDANT was PLAINTIFFS' employer or persons acting on behalf of
12 PLAINTIFFS' employer, within the meaning of California Labor Code § 558, who violated or
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
15 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
16 at all relevant times.

17 15. DEFENDANT was PLAINTIFFS' employers or persons acting on behalf of
18 PLAINTIFF's employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee

22 16. PLAINTIFFS were employed by DEFENDANT in California from February of
23 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
24 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
25 and overtime wages due for all time worked.

26 17. PLAINTIFFS bring this Class Action on behalf of themselves and a California
27 class, defined as all persons who are or previously were employed by DEFENDANT in California
28 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the

1 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
2 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
3 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

4 18. PLAINTIFFS bring this Class Action on behalf of themselves and a
5 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
6 incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice
7 which failed to lawfully compensate these employees. DEFENDANT's uniform policy and
8 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
9 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
10 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
11 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
12 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
13 economically injured by DEFENDANT's past and current unlawful conduct, and all other
14 appropriate legal and equitable relief.

15 19. DEFENDANT's uniform policies and practices alleged herein were unlawful,
16 unfair and deceptive business practices whereby DEFENDANT retained and continues to retain
17 wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

18 20. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an
19 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
20 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically
21 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
22 equitable relief.

23 **JURISDICTION AND VENUE**

24 21. This has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
26 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
27 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

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22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

23. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, including but not limited to, Wage Order 16, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, failed to pay all wages due during employment, failed compensate PLAINTIFFS for off-the-clock work, unlawfully deducted amounts from wages, failed to compensate PLAINTIFFS and other members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for business expenses, and failed to issue to PLAINTIFFS and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,

1 meaning the time during which an employee is subject to the control of an employer, including
2 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
3 PERIOD, DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work
4 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
5 result of PLAINTIFFS' demanding work requirements and DEFENDANT's understaffing,
6 DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to
7 be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work
8 assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break.
9 Indeed, there were many days where PLAINTIFFS did not even receive a partial lunch. More
10 specifically, from time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
11 required by DEFENDANT to work through their meal breaks in order to meet DEFENDANT's
12 prescribed labor hours to perform all the tasks required of them by DEFENDANT. PLAINTIFFS
13 and other CALIFORNIA CLASS Members were required to perform work-related tasks.
14 Additionally, PLAINTIFFS and other CALIFORNIA CLASS Members were required to perform
15 as much work as possible and as quickly as possible in order to meet DEFENDANT's strict
16 performance and production requirements. As a result, the PLAINTIFFS and other
17 CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by regularly
18 working without their time being accurately recorded and without compensation at the applicable
19 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
20 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by
21 DEFENDANTS' business records.

22 25. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
23 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFFS and other
24 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
25 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
26 other CALIFORNIA CLASS Members were required from time to time to perform work as
27 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
28 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and

1 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
2 these employees were required by DEFENDANT to work ten (10) hours of work from time to
3 time. The nature of the work performed by PLAINTIFFS and other CALIFORNIA CLASS
4 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
5 When they were provided with meal periods, PLAINTIFFS and other CALIFORNIA CLASS
6 Members were, from time to time, required to remain on duty and on call. PLAINTIFFS and
7 other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
8 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

9 **B. Rest Period Violations**

10 26. From time-to-time during the CLASS PERIOD, PLAINTIFFS and other
11 CALIFORNIA CLASS members were also required from time to time to work in excess of four
12 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
13 requirements and DEFENDANTS’ inadequate staffing. More specifically, from time to time,
14 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to
15 work through their rest breaks in order to meet DEFENDANT’s prescribed labor hours to perform
16 all the tasks required of them by DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS
17 Members were required to perform work-related tasks. Additionally, PLAINTIFFS and other
18 CALIFORNIA CLASS Members were required to perform as much work as possible and as
19 quickly as possible in order to meet DEFENDANT’s strict performance and production
20 requirements. Further, for the same reasons these employees were denied their first rest periods
21 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
22 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
23 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
24 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they
25 were provided with rest breaks, PLAINTIFFS and other CALIFORNIA CLASS Members were,
26 from time to time, required to remain on duty and/or on call. PLAINTIFFS and other
27 CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As
28 a result of their rigorous work schedules and DEFENDANTS’ inadequate staffing, PLAINTIFF

1 and other CALIFORNIA CLASS Members were from time to time denied their proper rest
2 periods by DEFENDANT and DEFENDANT's managers.

3 **C. Unlawful Rounding Violations**

4 27. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place
5 an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
6 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
7 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
8 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
9 undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in
10 fact unlawfully, and unilaterally round the time recorded in DEFENDANT's timekeeping system
11 for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying these
12 employees for all their time worked, including the applicable overtime compensation for overtime
13 worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time,
14 forfeited compensation for their time worked by working without their time being accurately
15 recorded and without compensation at the applicable overtime rates.

16 28. Further, the mutability of DEFENDANT's timekeeping system and unlawful
17 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
18 time being inaccurately recorded. As a result, from time to time, DEFENDANT's unlawful
19 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
20 perform work as ordered by DEFENDANT for more than five (5) hours during a shift without
21 receiving an off-duty meal break. Additionally, DEFENDANT's unlawful rounding policy and
22 practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered
23 by DEFENDANT for more than ten (10) hours during a shift without receiving a second off-duty
24 meal break.

25 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
26 **Sick Pay**

27 29. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
28 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS

1 members for their overtime and double time hours worked, meal and rest period premiums, and
2 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
3 due them for working overtime without compensation at the correct overtime and double time
4 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS' uniform policy and
5 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
6 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
7 law is evidenced by DEFENDANTS' business records.

8 30. State law provides that employees must be paid overtime at one-and-one-half times
9 their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS members were
10 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
11 employee's performance.

12 31. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
13 members' compensation was DEFENDANT's non-discretionary incentive program that paid
14 PLAINTIFFS and other CLASS MEMBERS incentive wages based on their performance for
15 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
16 basis with bonus compensation when the employees met the various performance goals set by
17 DEFENDANT.

18 32. However, from-time-to-time, when calculating the regular rate of pay, in those pay
19 periods where PLAINTIFFS and other CALIFORNIA CLASS members worked overtime, double
20 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
21 discretionary bonus, DEFENDANT failed to accurately include the non-discretionary bonus
22 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
23 rather than just all non-overtime hours worked. Management and supervisors described the
24 incentive/bonus program to potential and new employees as part of the compensation package.
25 As a matter of law, the incentive compensation received by PLAINTIFFS and other
26 CALIFORNIA CLASS members must be included in the "regular rate of pay." The failure to do
27 so has resulted in a systematic underpayment of overtime and double time compensation, meal
28 and rest period premiums, and sick pay to PLAINTIFFS and other CALIFORNIA CLASS

1 members by DEFENDANT. Specifically, California Labor Code Section 246 mandates that paid
2 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for
3 the workweek in which the non-exempt employee uses paid sick time, whether or not the
4 employee actually works overtime in that workweek. DEFENDANT's conduct, as articulated
5 herein, by failing to include the incentive compensation as part of the "regular rate of pay" for
6 purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of
7 which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

8 33. In violation of the applicable sections of the California Labor Code and the
9 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
10 matter of company policy, practice and procedure, intentionally and knowingly failed to
11 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
12 rate of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
13 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
14 of the correct overtime and double time compensation, meal and rest period premiums, and sick
15 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
16 unfair advantage over competitors who complied with the law. To the extent equitable tolling
17 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
18 CLASS PERIOD should be adjusted accordingly.

19 **E. Unreimbursed Business Expenses**

20 34. DEFENDANT as a matter of corporate policy, practice, and procedure,
21 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS
22 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFFS and
23 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
24 of DEFENDANT. Under California Labor Code Section 2802, employers are required to
25 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
26 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
27 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
28 of his or her duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful.”

3 35. In the course of their employment, DEFENDANT required PLAINTIFFS and
4 other CALIFORNIA CLASS Members to use their personal cell phones, vehicles, and tools as a
5 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
6 their own personal cell phones, vehicles, and tools, PLAINTIFFS and the CALIFORNIA CLASS
7 Members could not complete their essential job duties, including but not limited to, sending and
8 receiving work-related communications from DEFENDANT, driving to work sites., driving
9 between work sites, and transporting equipment.. However, DEFENDANT unlawfully failed to
10 reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for their use of their personal
11 cell phones, vehicles, and tools. As a result, in the course of their employment with
12 DEFENDANT, the PLAINTIFFS and other CALIFORNIA CLASS Members incurred
13 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
14 cellular phones, vehicles, and tools, all on behalf of and for the benefit of DEFENDANT.

15 **F. Wage Statement Violations**

16 36. California Labor Code Section 226 requires an employer to furnish its employees
17 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
18 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
19 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
20 of the employee and only the last four digits of the employee’s social security number or an
21 employee identification number other than a social security number, (8) the name and address of
22 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
23 period and the corresponding number of hours worked at each hourly rate by the employee.

24 37. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
25 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
26 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
27 to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate
28 wage statements which failed to show, among other things, the total hours worked and all

1 applicable hourly rates in effect during the pay period and the corresponding amount of time
2 worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest
3 periods.

4 38. In addition to the violations described above, DEFENDANTS, from time to time,
5 failed to provide PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements
6 that comply with Cal. Lab. Code § 226.

7 39. As a result, DEFENDANT issued PLAINTIFFS and the other members of the
8 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
9 DEFENDANT's violations are knowing and intentional, were not isolated or due to an
10 unintentional payroll error due to clerical or inadvertent mistake.

11 **G. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

12 40. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including all
15 the time the employee is suffered or permitted to work. From time to time, DEFENDANT required
16 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time
17 they were under DEFENDANT's control. Specifically, PLAINTIFFS performed work before and
18 after the beginning of their shift, spending time under the DEFENDANTS' control for which they
19 were not compensated. More specifically, from time to time, PLAINTIFFS and other
20 CALIFORNIA CLASS Members were required by DEFENDANT to perform work before and after
21 the beginning of their shifts in order to meet DEFENDANT's prescribed labor hours to perform all
22 the tasks required of them by DEFENDANT. Additionally, since DEFENDANT required
23 PLAINTIFFS and other CALIFORNIA CLASS Members to perform as much work as possible and
24 as quickly as possible in order to meet DEFENDANT's strict performance and production
25 requirements, PLAINTIFFS and other CALIFORNIA CLASS Members were, from time to time,
26 required to work off-the-clock before and after their shifts in order to meet DEFENDANT's strict
27 requirements.

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1 41. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited
2 minimum wage and overtime compensation by regularly working without their time being
3 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
4 DEFENDANT failed to pay PLAINTIFFS and other members of the CALIFORNIA CLASS
5 necessary wages for attending for performing work at DEFENDANT's direction, request and
6 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
7 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
8 business records.

9 42. DEFENDANT directed and directly benefited from the uncompensated off-the-
10 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

11 43. DEFENDANT controlled the work schedules, duties, protocols, applications,
12 assignments, and employment conditions of PLAINTIFFS and the other members of the
13 CALIFORNIA CLASS.

14 44. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
15 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
16 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
17 wages earned and owed for all the work they performed, including pre-shift, post shift and during
18 meal period off-the-clock work.

19 45. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-
20 exempt employees, subject to the requirements of the California Labor Code.

21 46. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
22 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
23 owed for the off-the-clock work activities. Because PLAINTIFFS and the other members of the
24 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
25 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

26 47. DEFENDANT knew or should have known that PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

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1 48. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
2 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
3 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
4 not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all hours worked
5 in accordance with applicable law is evidenced by DEFENDANT's business records.

6 49. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
7 take off duty meal and rest breaks and were not fully relieved of duty for their rest and meal
8 periods. PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more
9 than five (5) hours during a shift without receiving an off-duty meal break. Further,
10 DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period each workday
11 in which they were required by DEFENDANT to work ten (10) hours of work. When
12 DEFENDANTS provided PLAINTIFFS with a rest break, they required PLAINTIFFS to remain
13 on-duty and on-call, for the rest break. DEFENDANTS' policy caused PLAINTIFFS to remain
14 on-call and on-duty during what was supposed to be their off-duty meal periods. PLAINTIFFS
15 therefore forfeited meal and rest breaks without additional compensation and in accordance with
16 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
17 PLAINTIFFS with a paystub that failed to comply with Cal. Lab. Code § 226. Further,
18 DEFENDANTS failed to reimburse PLAINTIFFS for the use of their personal cell phone,
19 personal vehicle, and personal expenses for the purchase of tools as a result of and in furtherance
20 of their job duties for DEFENDANTS. To date, DEFENDANTS have not fully paid PLAINTIFFS
21 the minimum, overtime and double time compensation still owed to them or any penalty wages
22 owed to them under Cal. Lab. Code § 203. The amount in controversies for PLAINTIFFS
23 individually do not exceed the sum or value of \$75,000.

24 **H. CLASS ACTION ALLEGATIONS**

25 50. PLAINTIFF brings the First through Eighth Causes of Action as a class action
26 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
27 previously were employed by DEFENDANT in California and classified as non-exempt
28

employees (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing of the Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

51. PLAINTIFFS and the other CALIFORNIA CLASS Members have uniformly been deprived of wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums, and illegal meal and rest period policies. Defendant further failed to reimburse for business expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage statements, and failed to maintain required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

52. The members of the class are so numerous that joinder of all class members is impractical.

53. Common questions of law and fact regarding DEFENDANTS’ conduct, including but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failing to provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum wage and overtime, exist as to all members of the class and predominate over any questions affecting solely any individual members of the class. Among the questions of law and fact common to the class are:

- i. Whether DEFENDANTS maintained legally compliant meal period policies and practices;
- ii. Whether DEFENDANTS maintained legally compliant rest period policies and practices;
- iii. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members accurate premium payments for missed meal and rest periods;
- iv. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members accurate overtime wages;
- v. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA CLASS Members at least minimum wage for all hours worked;

- 1 vi. Whether DEFENDANT failed to compensate PLAINTIFFS and the
2 CALIFORNIA CLASS Members for required business expenses;
3 vii. Whether DEFENDANT issued legally compliant wage statements;
4 viii. Whether DEFENDANT committed an act of unfair competition by systematically
5 failing to record and pay PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS for all time worked;
7 ix. Whether DEFENDANT committed an act of unfair competition by systematically
8 failing to record all meal and rest breaks missed by PLAINTIFFS and other
9 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
10 of this work, required employees to perform this work and permits or suffers to
11 permit this work;
12 x. Whether DEFENDANT committed an act of unfair competition in violation of the
13 UCL, by failing to provide the PLAINTIFFS and the other members of the
14 CALIFORNIA CLASS with the legally required meal and rest periods.

15 54. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
16 as a result of DEFENDANTS' conduct and actions alleged herein.

17 55. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have
18 the same interests as the other members of the class.

19 56. PLAINTIFFS will fairly and adequately represent and protect the interests of the
20 CALIFORNIA CLASS Members.

21 57. PLAINTIFFS retained able class counsel with extensive experience in class action
22 litigation.

23 58. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
24 interests of the other CALIFORNIA CLASS Members.

25 59. There is a strong community of interest among PLAINTIFFS and the members of
26 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
27 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
28 sustained.

60. The questions of law and fact common to the CALIFORNIA CLASS Members predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

61. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all class members is impractical. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them. Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- i. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- ii. Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impeded their ability to protect their interests.

62. Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

FIRST CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

63. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

1 64. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
2 Code § 17021.

3 65. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
4 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
5 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
6 as follows:

7 Any person who engages, has engaged, or proposes to engage in unfair competition may
8 be enjoined in any court of competent jurisdiction. The court may make such orders or
9 judgments, including the appointment of a receiver, as may be necessary to prevent the
10 use or employment by any person of any practice which constitutes unfair competition, as
defined in this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by means of such
unfair competition. (Cal. Bus. & Prof. Code § 17203).

11 66. By the conduct alleged herein, DEFENDANT has engaged and continues to
12 engage in a business practice which violates California law, including but not limited to, the
13 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
14 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
15 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
16 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
17 constitute unfair competition, including restitution of wages wrongfully withheld.

18 67. By the conduct alleged herein, DEFENDANT’s practices were unlawful and unfair
19 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
20 or substantially injurious to employees, and were without valid justification or utility for which
21 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
22 Business & Professions Code, including restitution of wages wrongfully withheld.

23 68. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
24 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
25 mandated meal and rest periods and the required amount of compensation for missed meal and
26 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
27 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
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1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

3 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
4 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the
5 other members of the CALIFORNIA CLASS to be underpaid during their employment with
6 DEFENDANT.

7 70. By the conduct alleged herein, DEFENDANT's practices were also unfair and
8 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
9 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
10 as required by Cal. Lab. Code §§ 226.7 and 512.

11 71. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
12 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
13 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
14 each workday in which a second off-duty meal period was not timely provided for each ten (10)
15 hours of work.

16 72. PLAINTIFFS further demand on behalf of themselves and on behalf of each
17 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
18 not timely provided as required by law.

19 73. By and through the unlawful and unfair business practices described herein,
20 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
21 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
22 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
23 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
24 to unfairly compete against competitors who comply with the law.

25 74. All the acts described herein as violations of, among other things, the Industrial
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
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1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

3 75. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
4 to, and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
7 business practices, including earned but unpaid wages for all time worked.

8 76. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
10 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
11 engaging in any unlawful and unfair business practices in the future.

12 77. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
13 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
14 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
15 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
17 and economic harm unless DEFENDANT is restrained from continuing to engage in these
18 unlawful and unfair business practices.

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

21 **(Cal. Lab. Code §§ 221, 1194, 1197, 1197.1 Wage Order 16)**

22 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

23 78. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

26 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
27 for DEFENDANT'S willful and intentional violations of the California Labor Code and the
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1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
2 and pay minimum wages to PLAINTIFFS and the CALIFORNIA CLASS Members.

3 80. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
4 policy, an employer must timely pay its employees for all hours worked.

5 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
7 the minimum so fixed is unlawful.

8 82. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
9 including minimum wage compensation and interest thereon, together with the costs of suit.

10 83. Defendants improperly deducted the cost of renting a truck and gas from Plaintiffs’
11 and CALIFORNIA CLASS members’ wages in violation of §§221 and 1194.

12 84. Labor Code §221 states that it is “unlawful for any employer to collect or receive
13 from an employee any part of wages theretofore paid by said employer to said employee.”
14 Defendants’ practice of taking. And deducting wages from Plaintiff and other CALIFORNIA
15 CLASS members’ violates Labor Code §§221, 1194 and IWC Wage Order 16-2001, section 7.

16 85. Labor Code §§1194, 1197, 1197.1 and Industrial Welfare Commission (“IWC”)
17 Wage Order 16 require employers to pay an amount equal to or greater than the minimum wage
18 for each hour worked.

19 86. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
20 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
21 they worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully
22 and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of
23 the CALIFORNIA CLASS.

24 87. DEFENDANT maintained a uniform wage practice of failing to pay all wages due
25 as a result of unlawful deductions to the CALIFORNIA CLASS. As set forth herein,
26 DEFENDANTS’ uniform policy and practice was to unlawfully and intentionally deduct wages
27 due to PLAINTIFFS and other members of the CALIFORNIA CLASS.

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1 88. DEFENDANT’S uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denied accurate compensation and resulted in
4 unlawful deductions to PLAINTIFFS and the other members of the CALIFORNIA CLASS in
5 regards to minimum wage pay.

6 89. In committing these violations of the California Labor Code, DEFENDANT
7 inaccurately calculated the amount of time worked and/or improperly deducted certain costs from
8 Plaintiffs’ and CALIFORNIA CLASS members’ wages and consequently underpaid the actual
9 time worked and wages earned by PLAINTIFF and other members of the CALIFORNIA CLASS.
10 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
11 benefits in violation of the California Labor Code, the Industrial Welfare Commission
12 requirements and other applicable laws and regulations.

13 90. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
15 minimum wage compensation for their time worked for DEFENDANT.

16 91. During the CLASS PERIOD, PLAINTIFFS and the other members of the
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
18 failure to pay all earned wages.

19 92. By virtue of DEFENDANT’S unlawful failure to accurately pay all earned
20 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
21 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
22 suffered and will continue to suffer an economic injury in amounts which are presently unknown
23 to them, and which will be ascertained according to proof at trial.

24 93. DEFENDANT knew or should have known that PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS are under-compensated for their time worked.
26 DEFENDANT systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
28 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay

1 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages
2 for their time worked.

3 94. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
5 and provide them with the requisite compensation, DEFENDANT acted and continues to act
6 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
8 consequences to them, and with the despicable intent of depriving them of their property and legal
9 rights, and otherwise causing them injury in order to increase company profits at the expense of
10 these employees.

11 95. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
12 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
13 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
14 California Labor Code and/or other applicable statutes. To the extent minimum wage
15 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
16 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or
17 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
18 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
19 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
20 faith. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to seek and
21 recover statutory costs.

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

24 **(Cal. Lab. Code §§ 510, 1194, 1198 and Wage Order 16)**

25 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

26 96. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

1 97. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
2 for DEFENDANT's willful and intentional violations of the California Labor Code and the
3 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
4 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
5 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

6 98. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
7 public policy, an employer must timely pay its employees for all hours worked.

8 99. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
10 unless they receive additional compensation beyond their regular wages in amounts specified by
11 law.

12 100. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
13 including minimum wage and overtime compensation and interest thereon, together with the costs
14 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
15 than those fixed by the Industrial Welfare Commission is unlawful.

16 101. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
17 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
18 they worked, including overtime work.

19 102. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
21 implementing a uniform policy and practice that failed to accurately record overtime worked by
22 PLAINTIFFS and other CALIFORNIA CLASS Members and denied accurate compensation to
23 PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked,
24 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
25 (12) hours in a workday, and/or forty (40) hours in any workweek.

26 103. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

4 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 the PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
6 compensation for overtime worked.

7 105. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
8 from the overtime requirements of the law. None of these exemptions are applicable to the
9 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and
10 the other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
11 agreement that would preclude the causes of action contained herein this Complaint. Rather,
12 PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA CLASS based on
13 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of
14 California.

15 106. During the CLASS PERIOD, PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

18 107. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members
19 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
20 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
21 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to
22 work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and
23 pay as evidenced by DEFENDANT's business records and witnessed by employees.

24 108. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
25 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
26 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
27 CLASS have suffered and will continue to suffer an economic injury in amounts which are
28 presently unknown to them, and which will be ascertained according to proof at trial.

1 109. DEFENDANTS knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked.

7 110. In performing the acts and practices herein alleged in violation of California labor
8 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
9 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
10 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other
11 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
12 or the consequences to them, and with the despicable intent of depriving them of their property
13 and legal rights, and otherwise causing them injury in order to increase company profits at the
14 expense of these employees.

15 111. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
16 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
17 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
18 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
19 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
20 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
21 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time
22 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
23 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
24 intentional, and not in good faith. Further, PLAINTIFFS and other CALIFORNIA CLASS
25 Members are entitled to seek and recover statutory costs.

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1 additional compensation and in accordance with DEFENDANT's strict corporate policy and
2 practice.

3 117. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
4 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
5 who were not provided a meal period, in accordance with the applicable Wage Order, one
6 additional hour of compensation at each employee's regular rate of pay for each workday that a
7 meal period was not provided.

8 118. As a proximate result of the aforementioned violations, PLAINTIFFS and
9 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
10 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

13 **(Cal. Lab. Code §§ 226.7, 512 and Wage Order 16)**

14 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

15 119. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
16 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
17 Complaint.

18 120. Wage Order 16 and Labor Code section 226.7 provides that all non-exempt
19 employees are entitled to at least a 10-minute rest break for each work period of more than four
20 (4) hours, or major fraction thereof.

21 121. An employer's failure to provide an opportunity to take a rest break entitles the
22 employee an hour of pay for each day an employer fails to provide an opportunity to take a rest
23 break.

24 122. At all times herein relevant, PLAINTIFF and CALIFORNIA CLASS Members
25 were non-exempt employees entitled to rest breaks

26 123. From time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
27 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
28 Further, these employees were denied their first rest periods of at least ten (10) minutes for some

1 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
2 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
3 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
4 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour
5 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
6 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
7 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
8 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest
9 periods is evidenced by DEFENDANT's business records.

10 124. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
11 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
12 who were not provided a rest period, in accordance with the applicable Wage Order, one
13 additional hour of compensation at each employee's regular rate of pay for each workday that rest
14 period was not provided.

15 125. As a proximate result of the aforementioned violations, PLAINTIFFS and
16 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
17 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

18 **SIXTH CAUSE OF ACTION**

19 **Failure To Provide Accurate Itemized Statements**

20 **(Cal. Lab. Code §§ 226)**

21 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

22 126. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
23 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
24 Complaint.

25 127. Cal. Labor Code § 226 provides that an employer must furnish employees with an
26 "accurate itemized" statement in writing showing:

27 i. Gross wages earned,

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- ii. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- iii. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- iv. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- v. net wages earned,
- vi. the inclusive dates of the period for which the employee is paid,
- vii. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- viii. the name and address of the legal entity that is the employer, and
- ix. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

128. During the CLASS PERIOD, when PLAINTIFFS and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

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129. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the CALIFORNIA CLASS herein).

SEVENTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

130. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

131. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful

132. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the members of the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to

1 using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
2 Specifically, PLAINTIFFS and the members of the CALIFORNIA CLASS were required by
3 DEFENDANT to use their personal cell phones to execute their essential job duties on behalf of
4 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
5 PLAINTIFFS and the members of the CALIFORNIA CLASS for expenses resulting from using
6 their personal cellular phones for DEFENDANT within the course and scope of their employment
7 for DEFENDANT. These expenses were necessary to complete their principal job duties.
8 DEFENDANT are estopped by DEFENDANT's conduct to assert any waiver of their expectation.
9 Although these expenses were necessary expenses incurred by PLAINTIFFS and the members of
10 the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
11 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
12 under the laws and regulations of California.

13 133. PLAINTIFFS therefore demand reimbursement on behalf of the members of the
14 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
15 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
16 at the statutory rate and costs under Cal. Lab. Code § 2802.

17 **EIGHTH CAUSE OF ACTION**

18 **Failure To Pay Wages When Due**

19 **(Cal. Lab. Code §§ 201, 202, 203)**

20 **(Alleged by PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

21 134. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
23 Complaint.

24 135. Cal. Lab. Code § 200 provides that:

25 As used in this article:

- 26 (d) "Wages" includes all amounts for labor performed by employees of every
27 description, whether the amount is fixed or ascertained by the standard of time,
28 task, piece, Commission basis, or other method of calculation.

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1 (e) "Labor" includes labor, work, or service whether rendered or performed under
2 contract, subcontract, partnership, station plan, or other agreement if the to be
3 paid for is performed personally by the person demanding payment.

4 136. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
5 an employee, the wages earned and unpaid at the time of discharge are due and payable
6 immediately."

7 137. Cal. Lab. Code § 202 provides, in relevant part, that:

8 If an employee not having a written contract for a definite period quits his or her
9 employment, his or her wages shall become due and payable not later than 72 hours
10 thereafter, unless the employee has given 72 hours previous notice of his or her intention to
11 quit, in which case the employee is entitled to his or her wages at the time of quitting.
12 Notwithstanding any other provision of law, an employee who quits without providing a 72-
13 hour notice shall be entitled to receive payment by mail if he or she so requests and
14 designates a mailing address. The date of the mailing shall constitute the date of payment
15 for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

16 138. There was no definite term in PLAINTIFFS' or any CALIFORNIA CLASS
17 Members' employment contract.

18 139. Cal. Lab. Code § 203 provides:

19 If an employer willfully fails to pay, without abatement or reduction, in accordance with
20 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
21 quits, the wages of the employee shall continue as a penalty from the due date thereof at the
22 same rate until paid or until an action therefor is commenced; but the wages shall not
23 continue for more than 30 days.

24 140. The employment of PLAINTIFFS and many CALIFORNIA CLASS Members
25 terminated, and DEFENDANT has not tendered payment of wages to these employees who
26 missed meal and rest breaks, as required by law.

27 141. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
28 members of the CALIFORNIA CLASS whose employment has ended, PLAINTIFFS demand up
to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all
employees who terminated employment during the CLASS PERIOD and demand an accounting
and payment of all wages due, plus interest and statutory costs as allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **Failure To Pay Wages During Employment**

3 **(Cal. Lab. Code §§ 204 and 210)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 142. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 143. Labor Code section 204 requires employees to be paid wages at least twice per
9 month. If an employer fails to pay wages during the proper pay period, the employee is entitled
10 to a penalty of \$100 for an initial violation and \$200 for each subsequent or willful, or intentional
11 violation. Additionally, the employee is entitled to 25% of the amount unlawfully withheld.

12 144. DEFENDANTS failed to properly and timely compensate PLAINTIFF and
13 CALIFORNIA CLASS members all wages earned during their pay period(s).

14 145. DEFENDANTS' acts were willful and/or intentional.

15 146. As a result of DEFENDANTS' conduct, PLAINTIFF and CALIFORNIA CLASS
16 members are entitled to the penalty set forth in section 210 of the Labor Code.

17 147. PLAINTIFF and CALIFORNIA CLASS members request relief as
18 described in more detail below in the prayer.

19 **TENTH CAUSE OF ACTION**

20 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

21 **[Cal. Lab. Code §§ 2698, et seq.]**

22 **(By PLAINTIFFS and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

23 148. PLAINTIFFS and the AGGRIEVED EMPLOYEES reallege and incorporate by this
24 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 149. PAGA is a mechanism by which the State of California itself can enforce state labor
26 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
27 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
28 a law enforcement action designed to protect the public and not to benefit private parties. The

1 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
2 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
3 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
4 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
5 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

6 150. PLAINTIFFS bring this Representative Action on behalf of the State of California
7 with respect to themselves and all other current and former AGGRIEVED EMPLOYEES
8 employed by DEFENDANTS during the PAGA PERIOD.

9 151. At all relevant times, for the reasons described herein, and others, PLAINTIFFS and
10 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
11 meaning of Labor Code Section 2699(c).

12 152. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
13 PLAINTIFF, on behalf of themselves and other current or former employees, to bring a civil action
14 to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

15 153. PLAINTIFFS MARISCAL and PLAINTIFF GARCIA complied with the
16 procedures for bringing suit specified in Labor Code Section 2699.3. PLAINTIFF ROJAS
17 complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By
18 certified letter, return receipt requested, dated July 13, 2022, and August 11, 2022, PLAINTIFFS
19 MARISCAL, GARCIA and ROJAS gave written notice to the Labor and Workforce Development
20 Agency ("LWDA") and to DEFENDANTS of the specific provisions of the Labor Code alleged to
21 have been violated, including the facts and theories to support the alleged violations.

22 154. As of the date of this complaint, more than sixty-five (65) days after serving the
23 LWDA with notice of DEFENDANT'S violations, the LWDA has not provided any notice by
24 certified mail of its intent to investigate the DEFENDANT'S alleged violations as mandated by
25 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
26 PLAINTIFF may commence and is authorized to pursue this cause of action.

27 155. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
28 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
Labor Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 and 2804 in

the following amounts:

- a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)];
- b. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];
- c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];
- d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];
- e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 226.3];
- f. For violations of Labor Code Sections 1194, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section].
- g. For all provisions of the Labor Code for which civil penalty is not specifically

1 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one
2 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
3 for the initial violation and two hundred dollars (\$200) for each AGGRIEVED
4 EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and
5 the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
6 attorney's fees and costs in connection with their claims for civil penalties
7 pursuant to Labor Code Section 2699(g)(1).

8 156. To the extent that any of the conduct and violations alleged herein did not affect
9 PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that
10 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
11 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
12 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
13 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
14 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 9 c. An order requiring DEFENDANTS to pay all overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and
- 12 d. Restitutionary disgorgement of DEFENDANT'S ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANTS' violations due to
14 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
17 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
18 pursuant to Cal. Code of Civ. Proc. § 382;
- 19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation and separately owed rest periods, due to
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS, during the
22 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
- 25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: March 26, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: March 26, 2024

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay

Attorney for PLAINTIFF

EXHIBIT 2



ZAKAY LAW GROUP
A PROFESSIONAL LAW CORPORATION

Client # 51501

July 13, 2022

Via Online Filing to LWDA and Certified Mail to Defendant
Labor and Workforce Development Agency
Online Filing

JANCO INDUSTRIES, INC.

c/o Terry Alexander

7474 W 11th St.

Tracy, CA 95304

Sent via Certified Mail and Return Receipt 7022 0410 0001 5846 7063

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiffs Martin Mariscal (“Plaintiff Mariscal”) and Daniel Garcia (“Plaintiff Garcia”) (hereinafter collectively “Plaintiffs”), and other aggrieved employees in a proposed lawsuit against Defendant JANCO INDUSTRIES, INC. (“Defendant”). Plaintiffs have both been employed by Defendant in California since February 2022 as non-exempt employees, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiffs and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendant failed to timely pay Plaintiffs and other aggrieved employees for earned wages.

As a consequence, Plaintiffs contend that Defendant failed to fully compensate them and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiffs contend that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiffs seek to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant in California during the relevant claim period.

A true and correct copy of the proposed Complaint is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iv) sets forth the people/entities,

dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiffs, and (v) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiffs continue their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiffs and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiffs

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Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, and DANIEL
GARCIA, individuals, on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendant.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF

CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
6) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802;
8) RETALIATION IN VIOLATION OF CAL.
LAB. CODE § 1102.5;

DEMAND FOR A JURY TRIAL

PLAINTIFFS MARTIN MARISCAL and DANIEL GARCIA (“PLAINTIFF”), individuals,
on behalf of themselves and all other similarly situated current and former employees, alleges on
information and belief, except for their own acts and knowledge which are based on personal
knowledge, the following:

THE PARTIES

1. Defendant JANCO INDUSTRIES, INC. (“DEFENDANT”) is a California
corporation that at all relevant times mentioned herein conducted and continues to conduct
substantial and regular business in the state of California.

2. DEFENDANT provides production machining services in the State of California,
including in the county of San Joaquin, where PLAINTIFFS worked.

3. PLAINTIFF Martin Mariscal (“PLAINTIFF Mariscal”) was employed by
DEFENDANT in California since February of 2022 as a non-exempt employee, paid on an hourly
basis, and entitled to the legally required meal and rest periods and payment of minimum and
overtime wages due for all time worked.

4. PLAINTIFF Daniel Garcia (“PLAINTIFF Garcia”) was employed by
DEFENDANT in California since February of 2022 as a non-exempt employee, paid on an hourly
basis, and entitled to the legally required meal and rest periods and payment of minimum and
overtime wages due for all time worked.

5. The true names and capacities, whether individual, corporate, subsidiary,
partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently

1 unknown to PLAINTIFFS who therefore sues these Defendants by such fictitious names
2 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
3 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
4 ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief
5 alleges, that the Defendant named in this Complaint, including DOES 1 through 50, inclusive,
6 (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some
7 manner for one or more of the events and happenings that proximately caused the injuries and
8 damages hereinafter alleged.

9 6. The agents, servants, and/or employees of the Defendants and each of them acting
10 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as
11 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
12 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
13 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
14 Defendants are jointly and severally liable to PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
16 Defendants’ agents, servants and/or employees.

17 7. DEFENDANT was PLAINTIFFS’ employer or persons acting on behalf of
18 PLAINTIFFS’ employer, within the meaning of California Labor Code § 558, who violated or
19 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
20 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
21 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
22 at all relevant times.

23 8. DEFENDANT was PLAINTIFFS’ employers or persons acting on behalf of
24 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
25 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
26 employee a wage less than the minimum fixed by California state law, and as such, are subject to
27 civil penalties for each underpaid employee
28

1 9. PLAINTIFFS were employed by DEFENDANT in California from February of
2 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
3 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
4 and overtime wages due for all time worked.

5 10. PLAINTIFFS bring this Class Action on behalf of themselves and a California
6 class, defined as all persons who are or previously were employed by DEFENDANT in California
7 and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the
8 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
9 determined by the Court (the "CLASS PERIOD"). The amount in controversy for the aggregate
10 claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

11 11. PLAINTIFFS bring this Class Action on behalf of themselves and a
12 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
13 incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice
14 which failed to lawfully compensate these employees. DEFENDANT's uniform policy and
15 practice alleged herein was an unlawful, unfair and deceptive business practice whereby
16 DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members
17 of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA
18 CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the
19 named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been
20 economically injured by DEFENDANT's past and current unlawful conduct, and all other
21 appropriate legal and equitable relief.

22 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
23 unfair and deceptive business practices whereby DEFENDANT retained and continues to retain
24 wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.

25 13. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an
26 injunction enjoining such conduct by DEFENDANT in the future, relief for the named
27 PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically
28

1 injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and
2 equitable relief.

3 **JURISDICTION AND VENUE**

4 14. This has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
6 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
7 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and
10 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
11 in this County and/or conduct substantial business in this County, and (ii) committed the wrongful
12 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

13 **THE CONDUCT**

14 16. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
16 matter of company policy, practice and procedure, intentionally, knowingly and systematically
17 failed to provide legally compliant meal and rest periods, failed to accurately compensate
18 PLAINTIFFS and the other members of the CALIFORNIA CLASS for missed meal and rest
19 periods, failed to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
20 time worked, failed compensate PLAINTIFFS for off-the-clock work, failed to compensate
21 PLAINTIFFS and other members of the CALIFORNIA CLASS meal rest premiums at the regular
22 rate, failed to reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for business
23 expenses, and failed to issue to PLAINTIFFS and the members of the CALIFORNIA CLASS
24 with accurate itemized wage statements showing, among other things, all applicable hourly rates
25 in effect during the pay periods and the corresponding amount of time worked at each hourly rate.
26 DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate
27 and full payment for all time worked as required by California law which allows DEFENDANT
28 to illegally profit and gain an unfair advantage over competitors who comply with the law. To

1 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
2 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

3 **A. Meal Period Violations**

4 17. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
5 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked,
6 meaning the time during which an employee is subject to the control of an employer, including
7 all the time the employee is suffered or permitted to work. From time-to-time during the CLASS
8 PERIOD, DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work
9 without paying them for all the time they were under DEFENDANT's control. Specifically, as a
10 result of PLAINTIFFS' demanding work requirements and DEFENDANT's understaffing,
11 DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to
12 be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work
13 assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break.
14 Indeed, there were many days where PLAINTIFFS did not even receive a partial lunch. More
15 specifically, from time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
16 required by DEFENDANT to work through their meal breaks in order to meet DEFENDANT's
17 prescribed labor hours to perform all the tasks required of them by DEFENDANT. PLAINTIFFS
18 and other CALIFORNIA CLASS Members were required to perform work-related tasks.
19 Additionally, PLAINTIFFS and other CALIFORNIA CLASS Members were required to perform
20 as much work as possible and as quickly as possible in order to meet DEFENDANT's strict
21 performance and production requirements. As a result, the PLAINTIFFS and other
22 CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by regularly
23 working without their time being accurately recorded and without compensation at the applicable
24 minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay
25 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked is evidenced by
26 DEFENDANTS' business records.

27 18. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
28 requirements and DEFENDANT's inadequate staffing practices, PLAINTIFFS and other

1 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute off-
2 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and
3 other CALIFORNIA CLASS Members were required from time to time to perform work as
4 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
5 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and
6 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
7 these employees were required by DEFENDANT to work ten (10) hours of work from time to
8 time. The nature of the work performed by PLAINTIFFS and other CALIFORNIA CLASS
9 Members does not qualify for limited and narrowly construed “on-duty” meal period exception.
10 When they were provided with meal periods, PLAINTIFFS and other CALIFORNIA CLASS
11 Members were, from time to time, required to remain on duty and on call. PLAINTIFFS and
12 other CALIFORNIA CLASS Members therefore forfeited meal breaks without additional
13 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

14 **B. Rest Period Violations**

15 19. From time-to-time during the CLASS PERIOD, PLAINTIFFS and other
16 CALIFORNIA CLASS members were also required from time to time to work in excess of four
17 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
18 requirements and DEFENDANTS’ inadequate staffing. More specifically, from time to time,
19 PLAINTIFFS and other CALIFORNIA CLASS Members were required by DEFENDANT to
20 work through their rest breaks in order to meet DEFENDANT’s prescribed labor hours to perform
21 all the tasks required of them by DEFENDANT. PLAINTIFFS and other CALIFORNIA CLASS
22 Members were required to perform work-related tasks. Additionally, PLAINTIFFS and other
23 CALIFORNIA CLASS Members were required to perform as much work as possible and as
24 quickly as possible in order to meet DEFENDANT’s strict performance and production
25 requirements. Further, for the same reasons these employees were denied their first rest periods
26 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time
27 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
28 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least

ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFFS and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

C. Unlawful Rounding Violations

20. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being undercompensated for all of their time worked. As a result, DEFENDANT was able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANT's timekeeping system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

21. Further, the mutability of DEFENDANT's timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members' time being inaccurately recorded. As a result, from time to time, DEFENDANT's unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal break. Additionally, DEFENDANT's unlawful rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to perform work as ordered

1 by DEFENDANT for more than ten (10) hours during a shift without receiving a second off-duty
2 meal break.

3 **D. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
4 **Sick Pay**

5 22. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
6 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
7 members for their overtime and double time hours worked, meal and rest period premiums, and
8 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
9 due them for working overtime without compensation at the correct overtime and double time
10 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS’ uniform policy and
11 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
12 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
13 law is evidenced by DEFENDANTS’ business records.

14 23. State law provides that employees must be paid overtime at one-and-one-half times
15 their “regular rate of pay.” PLAINTIFFS and other CALIFORNIA CLASS members were
16 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
17 employee’s performance.

18 24. The second component of PLAINTIFFS’ and other CALIFORNIA CLASS
19 members’ compensation was DEFENDANT’s non-discretionary incentive program that paid
20 PLAINTIFFS and other CLASS MEMBERS incentive wages based on their performance for
21 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
22 basis with bonus compensation when the employees met the various performance goals set by
23 DEFENDANT.

24 25. However, from-time-to-time, when calculating the regular rate of pay, in those pay
25 periods where PLAINTIFFS and other CALIFORNIA CLASS members worked overtime, double
26 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
27 discretionary bonus, DEFENDANT failed to accurately include the non-discretionary bonus
28 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked

1 rather than just all non-overtime hours worked. Management and supervisors described the
2 incentive/bonus program to potential and new employees as part of the compensation package.
3 As a matter of law, the incentive compensation received by PLAINTIFFS and other
4 CALIFORNIA CLASS members must be included in the “regular rate of pay.” The failure to do
5 so has resulted in a systematic underpayment of overtime and double time compensation, meal
6 and rest period premiums, and sick pay to PLAINTIFFS and other CALIFORNIA CLASS
7 members by DEFENDANT. Specifically, California Labor Code Section 246 mandates that paid
8 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for
9 the workweek in which the non-exempt employee uses paid sick time, whether or not the
10 employee actually works overtime in that workweek. DEFENDANT’s conduct, as articulated
11 herein, by failing to include the incentive compensation as part of the “regular rate of pay” for
12 purposes of sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of
13 which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

14 26. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
16 matter of company policy, practice and procedure, intentionally and knowingly failed to
17 compensate PLAINTIFFS and the other members of the CALIFORNIA CLASS at the correct
18 rate of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
19 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
20 of the correct overtime and double time compensation, meal and rest period premiums, and sick
21 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
22 unfair advantage over competitors who complied with the law. To the extent equitable tolling
23 operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the
24 CLASS PERIOD should be adjusted accordingly.

25 **E. Unreimbursed Business Expenses**

26 27. DEFENDANT as a matter of corporate policy, practice, and procedure,
27 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS
28 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFFS and

1 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
2 of DEFENDANT. Under California Labor Code Section 2802, employers are required to
3 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
4 Lab. Code § 2802 expressly states that “an employer shall indemnify his or her employee for all
5 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
6 of his or her duties, or of his or her obedience to the directions of the employer, even though
7 unlawful, unless the employee, at the time of obeying the directions, believed them to be
8 unlawful.”

9 28. In the course of their employment, DEFENDANT required PLAINTIFFS and
10 other CALIFORNIA CLASS Members to use their personal cell phones, vehicles, and tools as a
11 result of and in furtherance of their job duties as employees for DEFENDANT. But for the use of
12 their own personal cell phones, vehicles, and tools, PLAINTIFFS and the CALIFORNIA CLASS
13 Members could not complete their essential job duties, including but not limited to, sending and
14 receiving work-related communications from DEFENDANT, driving to work sites., driving
15 between work sites, and transporting equipment.. However, DEFENDANT unlawfully failed to
16 reimburse PLAINTIFFS and other CALIFORNIA CLASS Members for their use of their personal
17 cell phones, vehicles, and tools. As a result, in the course of their employment with
18 DEFENDANT, the PLAINTIFFS and other CALIFORNIA CLASS Members incurred
19 unreimbursed business expenses, but were not limited to, costs related to the use of their personal
20 cellular phones, vehicles, and tools, all on behalf of and for the benefit of DEFENDANT.

21 **F. Wage Statement Violations**

22 29. California Labor Code Section 226 requires an employer to furnish its employees
23 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
24 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
25 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
26 of the employee and only the last four digits of the employee’s social security number or an
27 employee identification number other than a social security number, (8) the name and address of
28

1 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.

3 30. From time to time during the CLASS PERIOD, when PLAINTIFFS and other
4 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed
5 meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed
6 to provide PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate
7 wage statements which failed to show, among other things, the total hours worked and all
8 applicable hourly rates in effect during the pay period and the corresponding amount of time
9 worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest
10 periods.

11 31. In addition to the violations described above, DEFENDANTS, from time to time,
12 failed to provide PLAINTIFFS and the CALIFORNIA CLASS Members with wage statements
13 that comply with Cal. Lab. Code § 226.

14 32. As a result, DEFENDANT issued PLAINTIFFS and the other members of the
15 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
16 DEFENDANT's violations are knowing and intentional, were not isolated or due to an
17 unintentional payroll error due to clerical or inadvertent mistake.

18 **G. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

19 33. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
20 required to pay PLAINTIFFS and the CALIFORNIA CLASS Members for all their time worked,
21 meaning the time during which an employee is subject to the control of an employer, including all
22 the time the employee is suffered or permitted to work. From time to time, DEFENDANT required
23 PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time
24 they were under DEFENDANT's control. Specifically, PLAINTIFFS performed work before and
25 after the beginning of their shift, spending time under the DEFENDANTS' control for which they
26 were not compensated. More specifically, from time to time, PLAINTIFFS and other
27 CALIFORNIA CLASS Members were required by DEFENDANT to perform work before and after
28 the beginning of their shifts in order to meet DEFENDANT's prescribed labor hours to perform all

1 the tasks required of them by DEFENDANT. Additionally, since DEFENDANT required
2 PLAINTIFFS and other CALIFORNIA CLASS Members to perform as much work as possible and
3 as quickly as possible in order to meet DEFENDANT's strict performance and production
4 requirements, PLAINTIFFS and other CALIFORNIA CLASS Members were, from time to time,
5 required to work off-the-clock before and after their shifts in order to meet DEFENDANT's strict
6 requirements.

7 34. As a result, the PLAINTIFFS and other CALIFORNIA CLASS Members forfeited
8 minimum wage and overtime compensation by regularly working without their time being
9 accurately recorded and without compensation at the applicable minimum wage and overtime rates.
10 DEFENDANT failed to pay PLAINTIFFS and other members of the CALIFORNIA CLASS
11 necessary wages for attending for performing work at DEFENDANT's direction, request and
12 benefit, while off-the clock. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF
13 and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANTS'
14 business records.

15 35. DEFENDANT directed and directly benefited from the uncompensated off-the-
16 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 36. DEFENDANT controlled the work schedules, duties, protocols, applications,
18 assignments, and employment conditions of PLAINTIFFS and the other members of the
19 CALIFORNIA CLASS.

20 37. DEFENDANTS were able to track the amount of time PLAINTIFFS and the other
21 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
22 document, track, or pay PLAINTIFFS and the other members of the CALIFORNIA CLASS all
23 wages earned and owed for all the work they performed, including pre-shift, post shift and during
24 meal period off-the-clock work.

25 38. PLAINTIFFS and the other members of the CALIFORNIA CLASS were non-
26 exempt employees, subject to the requirements of the California Labor Code.

27 39. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other
28 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages

1 owed for the off-the-clock work activities. Because PLAINTIFFS and the other members of the
2 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
3 hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

4 40. DEFENDANT knew or should have known that PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

6 41. As a result, PLAINTIFFS and the other members of the CALIFORNIA CLASS
7 forfeited wages due them for all hours worked at DEFENDANT's direction, control and benefit
8 for the time spent working while off-the-clock. DEFENDANT's uniform policy and practice to
9 not pay PLAINTIFFS and the members of the CALIFORNIA CLASS wages for all hours worked
10 in accordance with applicable law is evidenced by DEFENDANT's business records.

11 **H. Plaintiff Mariscal's Individual Claims**

12 42. PLAINTIFF Mariscal has been employed by DEFENDANTS in California since
13 February of 2022. DEFENDANT would text PLAINTIFF Mariscal each day with the schedule
14 for the following day.

15 43. Throughout his employment with DEFENDANT, PLAINTIFF Mariscal was
16 treated differently and unfairly by DEFENDANT and its agents, all in retaliation against
17 PLAINTIFF Mariscal for various protected activities.

18 44. In or around May of 2022, PLAINTIFF Mariscal complained to DEFENDANT
19 about DEFENDANTS' unlawful wage-and-hour practices, including but not limited to,
20 DEFENDANTS' failure to provide legally-required meal and rest breaks and failure to pay for all
21 hours worked. PLAINTIFF Mariscal reported the unlawful conduct to DEFENDANT, but
22 PLAINTIFF Mariscal's report fell on deaf ears.

23 45. Shortly thereafter, in or around May of 2022, in response to PLAINTIFF
24 Mariscal's complaints to DEFENDANT, DEFENDANT refused to give PLAINTIFF Mariscal
25 work for a time period.

26 **I. Plaintiff Garcia's Individual Claims**

27 46. PLAINTIFF Garcia has been employed by DEFENDANTS in California since
28 February of 2022.

1 47. Throughout his employment with DEFENDANT, PLAINTIFF Garcia was treated
2 differently and unfairly by DEFENDANT and its agents, all in retaliation against PLAINTIFF
3 Garcia for various protected activities.

4 48. In or around May of 2022, PLAINTIFF Garcia complained to DEFENDANT
5 about DEFENDANTS' unlawful wage-and-hour practices, including but not limited to,
6 DEFENDANTS' failure to provide legally-required meal and rest breaks and failure to pay for all
7 hours worked. PLAINTIFF Garcia reported the unlawful conduct to DEFENDANT, but
8 PLAINTIFF Garcia's report fell on deaf ears.

9 49. Shortly thereafter, in or around May of 2022, in response to PLAINTIFF Garcia's
10 complaints to DEFENDANT, DEFENDANT refused to give PLAINTIFF Garcia work for a time
11 period.

12 **J. CLASS ACTION ALLEGATIONS**

13 50. PLAINTIFF brings the First through Eighth Causes of Action as a class action
14 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
15 previously were employed by DEFENDANT in California and classified as non-exempt
16 employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing
17 of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

18 51. PLAINTIFFS and the other CALIFORNIA CLASS Members have uniformly been
19 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
20 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
21 and illegal meal and rest period policies. Defendant further failed to reimburse for business
22 expenses, failed to compensate for off-the-clock work, failed to provide accurate itemized wage
23 statements, and failed to maintain required records, and interest, statutory and civil penalties,
24 attorney's fees, costs, and expenses.

25 52. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 53. Common questions of law and fact regarding DEFENDANTS' conduct, including
28 but not limited to, the off-the-clock work, unpaid mean and rest period premiums, failing to

1 provide legally compliant meal and rest periods, failed to reimburse for business expenses, failure
2 to provide accurate itemized wage statements accurate, and failure to ensure they are paid at least
3 minimum wage and overtime, exist as to all members of the class and predominate over any
4 questions affecting solely any individual members of the class. Among the questions of law and
5 fact common to the class are:

- 6 i. Whether DEFENDANTS maintained legally compliant meal period policies and
7 practices;
- 8 ii. Whether DEFENDANTS maintained legally compliant rest period policies and
9 practices;
- 10 iii. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
11 CLASS Members accurate premium payments for missed meal and rest periods;
- 12 iv. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
13 CLASS Members accurate overtime wages;
- 14 v. Whether DEFENDANT failed to pay PLAINTIFFS and the CALIFORNIA
15 CLASS Members at least minimum wage for all hours worked;
- 16 vi. Whether DEFENDANT failed to compensate PLAINTIFFS and the
17 CALIFORNIA CLASS Members for required business expenses;
- 18 vii. Whether DEFENDANT issued legally compliant wage statements;
- 19 viii. Whether DEFENDANT committed an act of unfair competition by systematically
20 failing to record and pay PLAINTIFFS and the other members of the
21 CALIFORNIA CLASS for all time worked;
- 22 ix. Whether DEFENDANT committed an act of unfair competition by systematically
23 failing to record all meal and rest breaks missed by PLAINTIFFS and other
24 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
25 of this work, required employees to perform this work and permits or suffers to
26 permit this work;

1 x. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFFS and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 54. PLAINTIFFS are members of the CALIFORNIA CLASS and suffered damages
5 as a result of DEFENDANTS' conduct and actions alleged herein.

6 55. PLAINTIFFS' claims are typical of the claims of the class, and PLAINTIFFS have
7 the same interests as the other members of the class.

8 56. PLAINTIFFS will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 57. PLAINTIFFS retained able class counsel with extensive experience in class action
11 litigation.

12 58. Further, PLAINTIFFS' interests are coincident with, and not antagonistic to, the
13 interests of the other CALIFORNIA CLASS Members.

14 59. There is a strong community of interest among PLAINTIFFS and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

18 60. The questions of law and fact common to the CALIFORNIA CLASS Members
19 predominate over any questions affecting only individual members, including legal and factual
20 issues relating to liability and damages.

21 61. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy because joinder of all class members is impractical. Moreover,
23 since the damages suffered by individual members of the class may be relatively small, the
24 expense and burden of individual litigation makes it practically impossible for the members of the
25 class individually to redress the wrongs done to them. Without class certification and
26 determination of declaratory, injunctive, statutory and other legal questions within the class
27 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
28 create the risk of:

1 66. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
5 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.
6 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
7 constitute unfair competition, including restitution of wages wrongfully withheld.

8 67. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
9 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
10 or substantially injurious to employees, and were without valid justification or utility for which
11 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
12 Business & Professions Code, including restitution of wages wrongfully withheld.

13 68. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
15 mandated meal and rest periods and the required amount of compensation for missed meal and
16 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
17 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
18 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
19 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

20 69. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
21 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the
22 other members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANT.

24 70. By the conduct alleged herein, DEFENDANT's practices were also unfair and
25 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
26 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
27 as required by Cal. Lab. Code §§ 226.7 and 512.

28

1 71. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
3 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
4 each workday in which a second off-duty meal period was not timely provided for each ten (10)
5 hours of work.

6 72. PLAINTIFFS further demand on behalf of themselves and on behalf of each
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
8 not timely provided as required by law.

9 73. By and through the unlawful and unfair business practices described herein,
10 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
11 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
12 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
13 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
14 to unfairly compete against competitors who comply with the law.

15 74. All the acts described herein as violations of, among other things, the Industrial
16 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
17 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
18 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
19 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

20 75. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
21 to, and do, seek such relief as may be necessary to restore to them the money and property which
22 DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
23 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
24 business practices, including earned but unpaid wages for all time worked.

25 76. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further
26 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
27 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
28 engaging in any unlawful and unfair business practices in the future.

1 77. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain,
2 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
3 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
4 result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other
5 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
6 and economic harm unless DEFENDANT is restrained from continuing to engage in these
7 unlawful and unfair business practices.

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

10 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

11 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

12 78. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
14 Complaint.

15 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
16 for DEFENDANT’S willful and intentional violations of the California Labor Code and the
17 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately calculate
18 and pay minimum wages to PLAINTIFFS and the CALIFORNIA CLASS Members.

19 80. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
20 policy, an employer must timely pay its employees for all hours worked.

21 81. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a lesser wage than
23 the minimum so fixed is unlawful.

24 82. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
25 including minimum wage compensation and interest thereon, together with the costs of suit.

26 83. DEFENDANT maintained a uniform wage practice of paying PLAINTIFFS and
27 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
28 they worked. As set forth herein, DEFENDANT’S uniform policy and practice was to unlawfully

1 and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of
2 the CALIFORNIA CLASS.

3 84. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
5 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFFS
6 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

7 85. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately calculated the amount of time worked and consequently underpaid the actual time
9 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
12 laws and regulations.

13 86. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
15 minimum wage compensation for their time worked for DEFENDANT.

16 87. During the CLASS PERIOD, PLAINTIFFS and the other members of the
17 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
18 failure to pay all earned wages.

19 88. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
20 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
21 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have
22 suffered and will continue to suffer an economic injury in amounts which are presently unknown
23 to them, and which will be ascertained according to proof at trial.

24 89. DEFENDANT knew or should have known that PLAINTIFFS and the other
25 members of the CALIFORNIA CLASS are under-compensated for their time worked.
26 DEFENDANT systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
28 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay

1 PLAINTIFFS and the other members of the CALIFORNIA CLASS the correct minimum wages
2 for their time worked.

3 90. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
5 and provide them with the requisite compensation, DEFENDANT acted and continues to act
6 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the
7 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
8 consequences to them, and with the despicable intent of depriving them of their property and legal
9 rights, and otherwise causing them injury in order to increase company profits at the expense of
10 these employees.

11 91. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
12 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
13 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
14 California Labor Code and/or other applicable statutes. To the extent minimum wage
15 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
16 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or
17 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
18 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
19 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
20 faith. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to seek and
21 recover statutory costs.

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

24 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

25 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

26 92. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

1 93. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim
2 for DEFENDANT's willful and intentional violations of the California Labor Code and the
3 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
4 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
5 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

6 94. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
7 public policy, an employer must timely pay its employees for all hours worked.

8 95. Cal. Lab. Code § 510 further provides that employees in California shall not be
9 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
10 unless they receive additional compensation beyond their regular wages in amounts specified by
11 law.

12 96. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
13 including minimum wage and overtime compensation and interest thereon, together with the costs
14 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
15 than those fixed by the Industrial Welfare Commission is unlawful.

16 97. During the CLASS PERIOD, PLAINTIFFS and CALIFORNIA CLASS Members
17 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
18 they worked, including overtime work.

19 98. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
21 implementing a uniform policy and practice that failed to accurately record overtime worked by
22 PLAINTIFFS and other CALIFORNIA CLASS Members and denied accurate compensation to
23 PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked,
24 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
25 (12) hours in a workday, and/or forty (40) hours in any workweek.

26 99. In committing these violations of the California Labor Code, DEFENDANT
27 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
28 PLAINTIFFS and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal

1 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
2 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
3 regulations.

4 100. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
5 the PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
6 compensation for overtime worked.

7 101. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
8 from the overtime requirements of the law. None of these exemptions are applicable to the
9 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFFS and
10 the other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
11 agreement that would preclude the causes of action contained herein this Complaint. Rather,
12 PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA CLASS based on
13 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of
14 California.

15 102. During the CLASS PERIOD, PLAINTIFFS and the other members of the
16 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
17 constituting a failure to pay all earned wages.

18 103. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members
19 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
20 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
21 though PLAINTIFFS and the other members of the CALIFORNIA CLASS were required to
22 work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and
23 pay as evidenced by DEFENDANT's business records and witnessed by employees.

24 104. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
25 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for all
26 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
27 CLASS have suffered and will continue to suffer an economic injury in amounts which are
28 presently unknown to them, and which will be ascertained according to proof at trial.

105. DEFENDANTS knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under compensated for all overtime worked. DEFENDANT systematically elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for overtime worked.

106. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

107. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFFS and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

108. PLAINTIFFS and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

109. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFFS and other members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

110. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

111. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

1 **Failure To Provide Required Rest Periods**

2 **(Cal. Lab. Code §§ 226.7 & 512)**

3 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

4 112. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
5 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
6 Complaint.

7 113. From time to time, PLAINTIFFS and other CALIFORNIA CLASS Members were
8 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
9 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
10 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
11 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
12 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
13 PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one-hour
14 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
15 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
16 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
17 PLAINTIFFS and the CALIFORNIA CLASS Members with all the legally required paid rest
18 periods is evidenced by DEFENDANT's business records.

19 114. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
20 IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members
21 who were not provided a rest period, in accordance with the applicable Wage Order, one
22 additional hour of compensation at each employee's regular rate of pay for each workday that rest
23 period was not provided.

24 115. As a proximate result of the aforementioned violations, PLAINTIFFS and
25 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
26 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

27 **SIXTH CAUSE OF ACTION**

28 **Failure To Provide Accurate Itemized Statements**

(Cal. Lab. Code §§ 226)

(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)

116. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

117. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized” statement in writing showing:

- i. Gross wages earned,
- ii. (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- iii. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- iv. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- v. net wages earned,
- vi. the inclusive dates of the period for which the employee is paid,
- vii. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- viii. the name and address of the legal entity that is the employer, and
- ix. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

118. During the CLASS PERIOD, when PLAINTIFFS and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also failed to provide

1 PLAINTIFFS and other CALIFORNIA CLASS Members with complete and accurate wage
2 statements which failed to show, among other things, the total hours worked and all applicable
3 hourly rates in effect during the pay period and the corresponding amount of time worked at each
4 hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. In
5 addition to the foregoing, DEFENDANT failed to provide itemized wage statements to
6 PLAINTIFFS and members of the CALIFORNIA CLASS that complied with the requirements
7 of California Labor Code Section 226.

8 119. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
9 § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
10 CLASS. These damages include, but are not limited to, costs expended calculating the correct
11 wages for all missed meal and rest breaks and the amount of employment taxes which were not
12 properly paid to state and federal tax authorities. These damages are difficult to estimate.
13 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to
14 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
15 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
16 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but
17 in no event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective
18 member of the CALIFORNIA CLASS herein).

19 **SEVENTH CAUSE OF ACTION**

20 **Failure To Reimburse Employees For Required Expenses**

21 **(Cal. Lab. Code §§ 2802)**

22 **(Alleged By PLAINTIFFS and the CALIFORNIA CLASS against all Defendants)**

23 120. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
24 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
25 Complaint.

26 121. Cal. Lab. Code § 2802 provides, in relevant part, that:

27 An employer shall indemnify his or her employee for all necessary expenditures or losses
28 incurred by the employee in direct consequence of the discharge of his or her duties, or of

1 his or her obedience to the directions of the employer, even though unlawful, unless the
2 employee, at the time of obeying the directions, believed them to be unlawful

3 122. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
4 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFFS and the members of the
5 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
6 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the members of
7 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
8 using their personal cellular phones all on behalf of and for the benefit of DEFENDANTS.
9 Specifically, PLAINTIFFS and the members of the CALIFORNIA CLASS were required by
10 DEFENDANT to use their personal cell phones to execute their essential job duties on behalf of
11 DEFENDANT. DEFENDANT's uniform policy, practice and procedure was to not reimburse
12 PLAINTIFFS and the members of the CALIFORNIA CLASS for expenses resulting from using
13 their personal cellular phones for DEFENDANT within the course and scope of their employment
14 for DEFENDANT. These expenses were necessary to complete their principal job duties.
15 DEFENDANT are estopped by DEFENDANT's conduct to assert any waiver of their expectation.
16 Although these expenses were necessary expenses incurred by PLAINTIFFS and the members of
17 the CALIFORNIA CLASS, DEFENDANT failed to indemnify and reimburse PLAINTIFF and
18 the members of the CALIFORNIA CLASS for these expenses as an employer is required to do
19 under the laws and regulations of California.

20 123. PLAINTIFFS therefore demand reimbursement on behalf of the members of the
21 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
22 on behalf of DEFENDANT, or his/her obedience to the directions of DEFENDANT, with interest
23 at the statutory rate and costs under Cal. Lab. Code § 2802.

24 **EIGHTH CAUSE OF ACTION**

25 **(Retaliation in Violation of Cal. Lab. Code §§1102.5 and 6310, and Government Code §**
26 **12900, *et seq.*)**

27 **(Alleged By PLAINTIFFS and against all Defendants)**
28

124. PLAINTIFFS reallege and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

125. At all relevant times, Labor Code section 1102.5 was in effect and was binding on DEFENDANTS. This statute prohibits DEFENDANT from retaliating against any employee, including PLAINTIFFS, for raising complaints of illegality and/or belief that the employee may disclose illegality.

126. At all relevant times, Government Code section 12900 was in effect and was binding on DEFENDANTS. This statute prohibits DEFENDANT from committing unlawful employment practices, including retaliating against PLAINTIFFS for seeking to exercise rights guaranteed under FEHA, participating in protected activities, reporting violations of applicable state and/or federal law, and/or opposing DEFENDANTS' failure to provide such rights.

127. PLAINTIFFS raised complaints of illegality while they worked for DEFENDANT, and DEFENDANT retaliated against them by taking adverse employment actions including withholding work hours from PLAINTIFFS.

128. As a proximate result of DEFENDANT's willful, knowing, and intentional violation(s) of Labor Code section 1102.5 and Government Code section 12900, PLAINTIFFS have suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to their damage in a sum according to proof.

129. As a result of DEFENDANT's adverse employment actions against PLAINTIFFS, PLAINTIFFS have suffered general and special damages in sums according to proof.

130. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner, entitling PLAINTIFFS to punitive damages against DEFENDANT.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA

1 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

2 b. An order temporarily, preliminarily and permanently enjoining and restraining
3 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

4 c. An order requiring DEFENDANT to pay all overtime wages and all sums
5 unlawfully withheld from compensation due to PLAINTIFF and the other members
6 of the CALIFORNIA CLASS; and

7 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
8 for restitution of the sums incidental to DEFENDANT's violations due to
9 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

10 2. On behalf of the CALIFORNIA CLASS:

11 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
12 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
13 to Cal. Code of Civ. Proc. § 382;

14 b. Compensatory damages, according to proof at trial, including compensatory
15 damages for overtime compensation and separately owed rest periods, due to
16 PLAINTIFFS and the other members of the CALIFORNIA CLASS, during the
17 applicable CLASS PERIOD plus interest thereon at the statutory rate;

18 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
19 the applicable IWC Wage Order;

20 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
21 which a violation occurs and one hundred dollars (\$100) per each member of the
22 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
23 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
24 violation of Cal. Lab. Code § 226

25 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
26 penalty from the due date thereof at the same rate until paid or until an action
27 therefore is commenced, in accordance with Cal. Lab. Code § 203.

28 3. On Plaintiffs' Ninth Cause of Action

- 1 a. For all special damages which were sustained as a result of DEFENDANT's
2 conduct, including but not limited to, back pay, front pay, lost compensation and
3 job benefits that PLAINTIFFS would have received but for the practices of
4 DEFENDANT;
5 b. For all exemplary damages, according to proof, which were sustained as a result of
6 DEFENDANT's conduct;
7 c. An award of interest, including prejudgment interest at the legal rate;
8 d. Such other and further relief as the Court deems just and equitable; and
9 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
10 4. On all claims:
11 a. An award of interest, including prejudgment interest at the legal rate;
12 b. Such other and further relief as the Court deems just and equitable; and
13 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
14

15 DATED: , 2022

16 **ZAKAY LAW GROUP, APLC**

17 By: 
18 Shani O. Zakay
19 Attorney for PLAINTIFF

20 **DEMAND FOR A JURY TRIAL**

21 PLAINTIFFS demand a jury trial on issues triable to a jury.

22 DATED: June 9, 2022

23 **ZAKAY LAW GROUP, APLC**

24 By: 
25 Shani O. Zakay
26 Attorney for PLAINTIFF
27
28

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Janco Industries, Inc.
c/o Terry Alexander
7474 W 11th St
Tracey, CA 95304



9590 9402 7420 2055 3646 08

2. Article Number (Transfer from service label)

7022 0410 0001 5846 7063

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ *David Marking*☐ Agent☐ Addressee

B. Received by (Printed Name)

David Marking

C. Date of Delivery

7-19-

D. Is delivery address different from item 1?

☐ YesIf YES, enter delivery address below: ☐ No*7/14/22 Mariscal 002-343*

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail®☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation

Restricted Delivery

☐ Restricted Delivery

EXHIBIT 3

EXHIBIT 4

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$200 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
 - J.D.- 2010

- Honors:
 - Dean's List Consecutive years
- **University of California, San Diego**
 - B.A.- 2006
 - Major: Economics
 - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years"

REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017
- *Chmurny v. State*, 392 Md. 159, 2006

EXAMPLES OF THE JCL LAW FIRM'S
REPRESENTATIVE CLASS ACTION & REPRESENTATIVE CASES

- *Ware v. Shake Shack Enterprises, LLC*, Alameda Superior Court Case No. 21CV002063 (October 19, 2023) Hon. Brad Seligman approved a \$1,330,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Trinh v. Precision Metal Products, Inc., et al.*, San Diego Superior Court Case No. 37-2022-00000965-CU-OE-CTL (October 16, 2023) Hon. Matthew C. Braner approved a \$450,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off the clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Anderson v. Barton Myers Associates, Inc., et al.*, Los Angeles Superior Court Case No. 21STCV43314 (October 12, 2023) Hon. Elihu M. Berl approved a \$900,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *DeSanctis v. Douglas Products and Packaging Company, LLC*, Contra Costa Superior Court Case No. C21-01874 (October 11, 2023) Hon. Charles S. Treat approved a \$372,500.00 class action and PAGA action settlement for, *inter alia*, failure to pay for all hours worked. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Jackson v. White Fir, LLC, et al.*, Sacramento Superior Court Case No. 34-2021-00301656 (October 6, 2023) Hon. Lauri A. Damrell approved a \$750,000.00 class action and PAGA action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Kneisly v. SR Machining, Inc., et al.*, Riverside Superior Court Case No. CVRI2201491 (October 5, 2023) Hon. Harold W. Hopp approved a \$220,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Mendez v. Bondz, Inc., et al.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0007486 (September 14, 2023) Hon. George J. Abdallah, Jr. approved a \$180,000.00 class action and PAGA action settlement for, *inter alia*, failure to comply with piece-rate laws. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Baray v. Curation Foods, Inc., et al.*, Santa Barbara Superior Court Case No. 21CV02834 (August 29, 2023) Hon. James F. Rigali approved a \$495,000.00 class action and PAGA action settlement for meal and rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Rodriguez, et al. v. Ferma Greenbox, Inc., et al.*, Alameda Superior Court Case No. RG21101104 (August 23, 2023) Hon. Evelio Grillo approved a \$200,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *O'Quinn v. Laugh Factory, Inc.*, Los Angeles Superior Court Case No. 19STCV28155 (August 1, 2023) Hon. Carolyn B. Kuhl approved a \$144,000.00 class action and PAGA action settlement for, *inter alia*, unlawful tip pooling. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Toler v. Total Testing Solutions, LLC*, Los Angeles Superior Court Case No. 21STCV38452 (July 27, 2023) Hon. Elihu M. Berle approved a \$160,000.00 class action and PAGA action settlement for meal and

rest period violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

- *Rodriguez v. EAH, Inc.*, Santa Cruz Superior Court Case No. 21CV00884 (July 25, 2023) Hon. Marjorie Carter approved a \$1,450,000.00 class action and PAGA action settlement for, *inter alia*, failure to compensate overtime and redeemed sick pay at the regular rate of pay. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Neutall v. Urban Alchemy*, San Francisco Superior Court Case No. CGC-20-588622 (July 13, 2023) Hon. Richard B. Ulmer approved a \$980,000.00 class action settlement for violations of California wage and hour laws. The Court appointed JCL Law Firm, APC as Class Counsel.
- *Rodriguez v. RM Parks Place, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2021-6050 (June 7, 2023) Hon. Erin Guy Castillo approved a \$175,000.00 class action and PAGA action settlement for, *inter alia*, wage statement violations. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Chrestensen v. Northeastern Rural Health Clinics* Lassen, Superior Court Case No. 63703 (April 13, 2023) Hon. Leonard J. La Casse approved a \$270,000.00 class action and PAGA action settlement for, *inter alia*, unpaid overtime wages. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Hernandez, et al. v. Parenting Network, Inc.*, Tulare Superior Court Case No. VCU287027 (March 14, 2023) Hon. Bret Hilman approved a \$225,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Sarmiento v. Caduceus Healthcare Inc.*, San Diego Superior Court Case No. 37-2021-00002597 (March 10, 2023) Hon. Richard S. Whitney approved a \$315,000.00 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Garces, et al. v. DriverDo, LLC*, Los Angeles Superior Court Case No. 19STCV32773 (January 24, 2023) Hon. Carolyn B. Kuhl approved a \$700,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *De Jesus v. Guardian Angel Home Care, Inc.*, San Diego Superior Court Case No. 37-2020-00021049-CU-OE-CTL (July 29, 2022) Hon. Ronald F. Frazier approved a \$300,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Kaur v. Aces 2020 I, LLC, et al.*, Contra Costa Superior Court Case No. MSC20-02482 (December 22, 2022) Hon. Edward G. Weil approved a \$585,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Molina v. Hawaiian Airlines, Inc.*, Los Angeles Superior Court Case No. 20STCV28079 (November 23, 2022) Hon. Maren Nelson approved a \$250,000 class action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the Plaintiff.
- *Lang Jr. v. Pathways Community Services LLC*, San Diego Superior Court Case No. 37-2019-00049969-CU-OE-CTL (September 9, 2022) Hon. James A. Mangione approved a \$160,000 class action and PAGA settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement

for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.

- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.
- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);