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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

12 **JOEL PASNO, JOHN KUNTZ, and**
13 **RODELLA HURTADO**, individually and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 vs.

17 **HIBU INC.**, a Delaware Corporation,

18 Defendant.
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CASE NO. 22STCV01361

**DECLARATION OF JULIAN HAMMOND IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: March 23, 2023
Time: 9:00 a.m.
Dept. 17

1 I, Julian Hammond, declare as follows:

2 **I. INTRODUCTION**

3 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
4 declaration and could and would testify competently to them.

5 2. I am a member in good standing of the Bar of the State of California. I am licensed to
6 practice before all courts in the State of California.

7 3. I am the founding shareholder of the law firm HammondLaw, P.C. (“HammondLaw” or
8 “Class Counsel”) and counsel for the named Plaintiffs Joel Pasno, John Kuntz, and Rodella Hurtado
9 (collectively, “Plaintiffs”) and approximately 133 as Account Representatives, Account Executives,
10 Digital Account Executives, or other non-management sales representatives (“Class Members” or
11 “CMs”) who were employed by Hibu Inc. (“Defendant” or “Hibu”) in California at any time during the
12 period from January 12, 2018 through December 13, 2022 (“Class Period”).¹

13 4. Plaintiffs are committed to representing the interests of the CMs, do not have any conflicts
14 with any CM, and their interests are virtually coextensive with those of the CMs.

15 5. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class
16 Action Settlement. A copy of the Class Action Settlement Agreement in this matter is attached to the
17 Proposed Order, filed herewith

18 6. HammondLaw has been certified as Class Counsel or Co-Class Counsel in over 55 wage
19 and hour class actions, representing tens of thousands of employees, including in the Superior Courts for
20 the counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, Solano, Santa Clara,
21 Monterey, San Joaquin, Placer, Orange, Contra Costa, San Bernardino, and in federal District Courts in
22 California in diversity jurisdiction cases based on state law, over the last ten years. In addition,
23 HammondLaw is putative Class Counsel in at least 30 pending actions in California Superior Courts, and
24 federal courts, some of which have been tentatively settled and/or preliminarily approved by the Courts.
25 A list of all prior cases in which Class Counsel has been approved to act as lead or co-lead counsel is
26 attached as **Exhibit 1**.

27 7. My firm’s experience in the prosecution and resolution of wage and hour class actions
28 was a significant factor in this case proceeding to early mediation and favorable settlement.

¹ As of July 31, 2022, there were 133 CMs. The number of CMs is subject to increase for individuals hired by Hibu after July 31, 2022 through the end of the Class Period. The parties will provide the Court with the exact class size before the preliminary approval hearing.

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Procedural History

8. Plaintiffs filed this lawsuit in Los Angeles County Superior Court on January 12, 2022, and filed a First Amended Complaint (“FAC”) on April 12, 2022 adding a PAGA cause of action. Plaintiffs’ PAGA Notice is attached as **Exhibit 2**. Plaintiffs allege that during the Class Period, Defendant required Class Members to perform work duties from their home offices and/or in the field when visiting prospective clients. In order to do so, Class Members were required to incur home office expenses, including cell phones, printing supplies, utilities, internet, mobile apps, and software. Class Members were also required to use their personal vehicles to visit their clients and prospective clients. Defendant, however, did not require Class Members to track and submit such expenses to Defendant for reimbursement; rather, for most of the Class Period, Defendant reimbursed CMs a flat monthly stipend, which the FAC alleges was in violation of California Labor Code § 2802.

9. Plaintiffs also allege that Defendant required Class Members to work over 8 hours a day and/or 40 hours per week during the three weeks of training they were required to complete at the start of their employment. Plaintiffs allege that during the training period, Class Members were not making any sales, did not fall within the outside salesperson exemption, and were non-exempt employees, entitled to minimum wage protections, including overtime pay. As a result of its failure to pay overtime, Plaintiffs allege that Defendant also failed to issue itemized wage statements that included their hours worked and hourly rates earned pursuant to Labor Code § 226(a); and failed to pay all wages due at the time of discharge in violation Labor Code § 203.

10. In its Answer, Defendant generally denied all allegations and raised 38 affirmative defenses, including that any violation of the Labor Code was not knowing and willful; that Defendant disputed in good faith that CMs were not owed overtime pay; that CMs’ wage statements were compliant and CMs were not injured; that CMs were properly classified as exempt throughout their employment; and that Defendant did reimburse CMs for all of their reasonable necessarily incurred business expenses.

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Discovery and Investigation

11. Shortly after the Complaint was filed, the parties agreed to engage in informal discovery and attend mediation. Defendant produced key data and documents as part of informal discovery including: (a) dates of employment for each Class Member from the start of the Class Period through to July 31, 2022, including start date, end date, leaves of absences (if any); (b) training dates for each Class Member who completed an initial sales training during the Class Period, and whether the training was in-person or virtual; (c) expense reimbursement policies in effect during the Class Period; and (d) Plaintiffs’ personnel files. Plaintiffs’ Counsel also conducted their own investigation, including in-depth

1 discussions with each Plaintiff, and analyzed the data produced by Defendant to calculate the data points
2 necessary to thoroughly evaluate their class claims, including the class size, the number of weeks worked
3 by the Class, and number of weeks Class Members spent attending trainings, and extrapolated these data
4 points out to the end of 2022.

5 12. In April 2022, Hibu changed its reimbursement practice from a stipend to reimbursement
6 based on reporting by the CM of business mileage and home office expenses.

7 **Mediation**

8 13. On September 14, 2022, the Parties participated in a mediation session with the Hon. Brian
9 C. Walsh, a former complex litigation judge on the Santa Clara County Superior Court and an
10 experienced mediator who has mediated numerous wage-and-hour class and PAGA actions. Prior to the
11 mediation, the parties submitted detailed mediation briefs supported by documents obtained in informal
12 discovery. The parties reached an agreement at mediation, which was subsequently finalized in a formal
13 settlement agreement that is presented to the Court for approval.

14 **II. PLAINTIFFS' DAMAGES ANALYSIS**

15 14. Plaintiffs calculated Defendant's maximum liability (before applying any discounts based
16 on merits defenses and the risk of non-certification) and potential realistic liability (after applying
17 discounts) as follows:

18 **Unreimbursed Expenses Claim - Labor Code § 2802**

19 15. Plaintiffs alleged that, throughout the Class Period, Class Members were required to work
20 remotely from their home offices. CMs had to pay for cell phone service, internet, mobile apps, and
21 printing supplies in order to work remotely. CMs were also required to use their own personal vehicles
22 to drive between their home offices and their clients' places of business in order to make sales.

23 16. From the start of the Class Period until March 31, 2022, Defendant reimbursed Class
24 Members a stipend of, an average, \$373 per pay period in addition to a one-time \$500 home-office stipend
25 at the start of their employment. As stated above, in April 2022, Hibu changed its reimbursement practice
26 from a stipend to reimbursement of business expenses based on monthly reporting by the CM.

27 17. Based on conversations with Plaintiffs, Plaintiffs estimate that CMs drove approximately
28 1,500 miles per month between their home offices and their current and prospective clients. Based on
data provided by Defendant, the Class worked 1,041 months between the start of the Class Period and
March 31, 2022 (when Defendant started reimbursing Class Members for their actual expenses). Using
the average IRS mileage rate during the Class Period of \$0.58 per mile, Plaintiffs estimate that Defendant

1 is liable for \$870 per working month by the Class (which is $\$0.58 * 1,500$ miles) and \$905,670 for the
2 entire Class (which is $\$870$ per month * 1,041 months) in unreimbursed driving expenses.

3 18. Based on conversations with Plaintiffs, Plaintiffs estimate that CMs incurred
4 approximately \$275 per month in remote work expenses including internet (\$70 per month), cell phone
5 service (\$78 per month), apps (\$10 per month) and printing supplies (\$115 per month). Plaintiffs estimate
6 that Defendant is therefore liable for \$286,275 in remote work expenses (which is $\$275$ per month *
7 1,041 months).

8 19. During the Class Period, Plaintiffs estimate that Defendant reimbursed CMs \$909,096,
9 including \$842,596 in bi-weekly stipends (which is $\$373 * 2.17$ pay periods per month * 1,041 months)
10 and \$66,500 in one-time remote work stipends (which is $\$500 * 133$ Class Members). After deducting
11 this amount, Plaintiffs calculated the unreimbursed expenses as \$282,040. Interest at 10% adds
12 approximately \$70,509 for a total of **\$352,549**.

13 20. **Class Certification and Merits Discount:** Defendant vigorously contended that
14 Plaintiffs would be unable to certify their class claims, given that CMs had different expenses and
15 different work circumstances, and the expenses that were reasonable for one CM might not have been
16 reasonable for another. Defendant contended that, as a result, individualized issues would prevent class
17 certification in this case. Plaintiffs applied a 50% reduction for this risk, which reduced Defendant's
18 exposure to \$176,274.

19 21. Defendant also contended that Plaintiffs' estimates of unreimbursed expenses were
20 grossly inflated. Defendant argued, based on its own data, including mileage logs submitted by CMs
21 since April 2022, that CMs in fact drive on average less than 650 miles per month. Defendant further
22 contended that only a fraction of the \$148 in home internet and personal cell phone expenses Plaintiffs
23 allege they incurred each month could be attributable to working for Hibu, especially for those CMs who
24 were on family plans; and that the \$115 in printing expenses Plaintiffs allege they incurred each month
25 were unnecessary because the vast majority of Hibu work was in electronic format and there was little or
26 no need for CMs to print anything. Thus, Hibu contended that it in fact over-reimbursed CMs by
27 providing them a \$373 biweekly stipend.

28 22. Plaintiffs applied a 50% discount for the argument that a fact finder would find that
Plaintiffs' estimated unreimbursed expenses were inflated, and that even if expenses were incurred, they
were voluntary or minimal. After applying these discounts, for settlement purposes, Plaintiffs calculated
Defendant's realistic damages owed to the Class as **\$88,137**.

1 **Unpaid Overtime – Labor Code § 510**

2 23. Plaintiffs allege that CMs were required to attend a three-week training program at the
3 start of their employment with Defendant, during which they did not sell Hibu’s services, and did not
4 spend more than half of their working time outside Defendant’s place of business. As a result, during the
5 three-week training period, CMs did not fall within the outside salesperson exempt and were non-exempt
6 employees, entitled to minimum wage protections, including overtime pay, under California law.

7 24. Plaintiffs estimate that CMs worked, on average, 5 hours of overtime per week during the
8 training period, none of which was compensated at the overtime rate. According to data provided by
9 Defendant, CMs attended a total of 294 weeks of training during the Class Period. Based on a review of
10 Plaintiffs’ pay statements, CMs were paid an average hourly rate of \$22.12 and the overtime rate was
11 \$33.18. Thus, Plaintiffs calculated Defendant’s exposure on the overtime wage claim by multiplying (5
12 hours of weekly overtime * 294 weeks) and multiplying the result (1,470 hours) by \$33.18, which equals
13 \$48,774. Interest at 10% adds \$12,194 for a total of **\$60,968.**

14 25. **Class Certification and Merits Discount:** Defendant contended that CMs were properly
15 classified as outside salespersons throughout their entire employment, including during training weeks,
16 and that the question of whether CMs spent more than half their time away from Defendant’s place of
17 business making sales during the training weeks would lead to manageability issues. Defendant also
18 contended that CMs did not track their hours worked during trainings, leading to individualized issues as
19 to whether CMs actually worked overtime, and whether any overtime was voluntarily. Plaintiffs applied
20 a 50% discount for this risk, which reduced Defendant’s exposure to \$30,484.

21 26. Defendant also contended that Plaintiffs would lose on the merits because CMs were never
22 scheduled to work more than 8 hours a day during their training weeks. Defendant contended that, prior
23 to Covid-19, CMs were scheduled to work approximately 7 hours per day during trainings, attending in-
24 person or virtual seminars, prospecting in the field with other CMs, and completing short homework
25 assignments. Starting in March 2020, Hibu changed to a completely virtual training format, and CMs
26 were expected to spend even fewer hours attending online seminars and completing assignments each
27 day. According to data provided by Defendant, approximately half of the initial sales trainings (53 of
28 98) were completely virtual, and Plaintiffs applied a 50% discount for the risk that Defendant would
successfully argue that CMs worked no overtime during the virtual trainings. This reduced Defendant’s
exposure to **\$15,242.**

1 **Inaccurate Wage Statements - Labor Code §§ 226(a), (e)**

2 27. Plaintiffs contend that during CMs’ training weeks, the CMs, as non-exempt employees,
3 were entitled to wage statements that listed their total hours worked and applicable hourly rates pursuant
4 to Labor Code §§ 226(a)(2) and (a)(9). However, Defendant did not track their hours worked and did not
include on their wage statements any entries for actual hours worked or applicable hourly rates.

5 28. Plaintiffs alleged that Defendant’s practice with respect to the information included (and
6 omitted) on the wage statements was not a result of an unintentional payroll error, or clerical mistake,
7 but rather a result of Defendant’s regular compensation policies including its policy of failing to pay
8 overtime wages. Indeed, Defendant could not have met the §226(a)(2) and (a)(9) requirements because
9 it didn’t track the hours worked by CMs. As such, the violation of Labor Code § 226(a) was knowing
10 and intentional. Plaintiffs also alleged that CMs suffered injury as a result, because they could not
11 determine from the wage statements alone the number of actual hours worked, or an applicable hourly
rate.

12 29. Plaintiffs calculated Defendant’s liability as follows: According to data provided by
13 Defendant, 46 CMs attended trainings during the liability period (January 12, 2021 to December 13,
14 2022); and each CM was issued two wage statements for three weeks of training. Defendant is liable for
15 \$50 for 46 “initial” violations and \$100 for 46 “subsequent” violations, or a total of **\$6,900**.

16 30. **Class Certification and Merits Discounts:** Plaintiffs applied the same 50% discounts for
17 certification risk to the underlying overtime claim, which reduced Defendant’s exposure to \$3,450; and
18 a 50% discount for the risk of losing on the merits, including the risk that a court would find that only
19 the initial \$50 penalty applied to each violation because Defendant did not receive notice that its wage
20 statements were noncompliant, and so there were arguably no “subsequent” violations; and Defendant’s
21 affirmative defense that Plaintiffs did not suffer injury as a result of Defendant failing to provide
22 compliant wage statements, as required under Labor Code § 226(e). This reduced Defendant’s exposure
to **\$1,725**.

23 **Waiting Time Penalties – Labor Code §§ 201-203**

24 31. Plaintiffs allege that CMs were entitled to waiting time penalties under Labor Code § 203
25 as a result of Defendant’s failure to pay overtime, which resulted in 30 days of waiting time penalties for
26 the 72 CMs who ceased working for Defendant during the relevant time period (January 12, 2019 through
27 July 31, 2022)

1 32. As stated above, CMs average hourly rate was \$22.12, and assuming CMs worked on
2 average 8 hours per day, the daily rate of pay is \$176.96. Plaintiffs calculated 30 days' wages for one
3 CM as \$5,308.80, and \$382,234 for all 72 formerly employed CMs.

4 33. **Class Certification and Merits Discounts:** Plaintiffs applied the same 50% discount for
5 the certification applied to the underlying overtime claim, which reduced Defendant's exposure to
6 \$191,116. Plaintiffs applied a further 50% discount for Defendant's affirmative defense that any alleged
7 failure to pay all wages due upon discharge was not willful because there existed a good faith dispute
8 that CMs were exempt, and therefore not entitled to overtime pay. This further reduced Defendant's
9 exposure on the waiting time penalties claim to **\$95,558**.

10 **Maximum and Realistic Exposure**

11 34. Plaintiffs calculated maximum exposure (excluding PAGA) as \$802,652 and the realistic
12 exposure as \$200,663, as follows:

Labor Code Section	Maximum Exposure	Realistic Exposure
Unreimbursed Expenses (§ 2802)	\$352,549	\$88,137
Unpaid Overtime (§§ 510 / 1194)	\$60,968	\$15,242
Wage Statements (§§ 226(a), (e))	\$6,900	\$1,725
Waiting Time Penalties (§ 203)	\$382,234	\$95,558
Total	\$802,652	\$200,663

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17 35. The \$140,000 Gross Settlement Amount represents 17% of Defendant's maximum
18 exposure, and 70% of Defendant's realistic exposure (excluding PAGA). Based on my experience with
19 similar class actions and my investigation, research, and knowledge of the specific facts and legal issues
20 in this case, I believe that the Settlement is fair, adequate, reasonable, and appropriate. This conclusion
21 is based on my knowledge of the strength and weaknesses of the claims asserted by Plaintiffs,
22 Defendant's defenses, and the typical risks associated with class action litigation.

23 36. The Net Settlement Amount – the amount remaining of the Gross Settlement Amount after
24 deductions of attorneys' fees, costs, enhancement awards, settlement administration costs, and PAGA
25 penalties – will total approximately \$57,833 if the Court grants the fees and costs requested by Plaintiffs
26 in full. The average payment per CM (based on a class size of 133) is \$1,052.63 gross² and \$434.84 net.³

27 ² \$140,000 / 133 CMs

28 ³ \$57,833 / 133 CMs

1 Plaintiffs calculated that CMs worked approximately 6,004 work weeks. The value of each work week
2 is approximately \$23.32 gross and \$9.63 net. A Class Member who works for the entire 5-year Class
3 Period will receive approximately \$2,408 net. These are significant recoveries when considering the risk
4 associated with Defendant’s defenses, class certification, and when considering the fact that Defendant
5 reimbursed over \$900,000 in expenses during the Class Period. In my experience, this settlement is fair,
adequate, and reasonable for the Class.

6 **PAGA Allocation is Fair and Adequate**

7 37. Based on data provided by Defendant, Plaintiffs calculated that there are approximately
8 914 pay periods during the PAGA Period (defined as October 26, 2020 to December 13, 2022). Using a
9 penalty of \$100 per pay period (because Defendant never received notice from the Labor Commissioner
10 or the Court so there are arguably no “subsequent” violations) Defendant’s maximum exposure in PAGA
11 Penalties is \$91,400 (assuming the Court would not allow “stacking” of PAGA penalties for each separate
Labor Code violation).

12 38. The \$5,000 allocated to PAGA penalties represents approximately 5% of Defendant’s
13 exposure to PAGA penalties, which is higher than PAGA allocations in similar cases that received final
14 approval from California Superior Courts including *Burleigh v. National University*, Case No. MSC21-
15 00939 (Contra Costa Cty. Sup. Ct.) (Aug. 26, 2022) (finally approving a PAGA allocation of \$50,000,
16 representing 1% of the maximum \$4,213,200 in PAGA penalties); *Chindamo v. Chapman University*,
17 Case No. 30-2020-01147814-CU-OE-CXC (Orange County Superior Court) (April 15, 2022) (finally
18 approving a PAGA allocation of \$50,000, representing 2% of the maximum \$1,651,620 in PAGA
19 penalties); *Sweetland-Gil v. University of the Pacific*, Case No. STK-CV-UOE-2019-0014682 (San
20 Joaquin County Superior Court) (March 4, 2022) (finally approving a PAGA allocation of \$30,000,
21 representing 1.6% of the maximum \$1,517,700 in PAGA penalties); *Senese v. University of San Diego*,
22 Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022)
23 (finally approving a PAGA allocation of \$60,000, representing 1.6% of the maximum \$1,084,192 in
24 PAGA penalties); *Solis et al. v Concordia University Irvine*, Case No. 30-2019-01114998-CU-OE-CXC
25 (Orange County Superior Court)(February 3, 2022) (finally approving a PAGA allocation of \$20,000,
26 representing 2% of the maximum \$972,700 in PAGA penalties); *Stupar et al. v University of La Verne*,
27 Los Angeles Superior Court) (October 14, 2021) (finally approving a PAGA allocation of \$50,000,
28 representing 4% of the maximum \$1,350,800 in PAGA penalties); *Normand v. Loyola Marymount*
University, Case No. 19STCV17953 (Los Angeles Superior Court) (September 9, 2021) (finally
approving a PAGA allocation of \$50,000, representing 3% of the maximum \$1,491,700 in PAGA

1 penalties); *Veal v Point Loma Nazarene University*, Case No. 37-2019-00064165-CU-OE-CTL (San
2 Diego Superior Court) (August 27, 2021)(finally approving a PAGA allocation of \$15,000, representing
3 2% of the maximum \$493,000 in PAGA penalties); *Pillow et al. v. Pepperdine University*, Case No.
4 19STCV33162 (Los Angeles Superior Court)(July 28, 2021)(finally approving a PAGA allocation of
5 \$15,000, representing 1% of the maximum \$1,619,200 in PAGA penalties); *Moore et al v Notre Dame*
6 *De Namur University*, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021)(finally
7 approving a PAGA allocation in the amount of \$12,000, representing 1.9% of the maximum \$631,300 in
8 PAGA penalties); *Mooiman et al. v Saint Mary's College of California*, Case No. C19-02092 (Contra
9 Costa County Superior Court) (June 10, 2021)(finally approving a \$30,000 PAGA allocation representing
10 1% of the maximum \$649,200 in PAGA penalties, and explaining that “the record indicates that
11 defendant changed many of the policies at issue before the action was brought, that there is a substantial
12 monetary award which in part serves the deterrent function of a penalty, and that defendant had some
13 arguments of “good faith,” that would mitigate penalties”); *Peng v. The President and Board of Trustees*
14 *of Santa Clara College*, Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021)
15 (finally approving a PAGA allocation of \$25,000, representing 3.5% of the maximum \$709,700 in PAGA
16 penalties); *Morse v Fresno Pacific University*, Case No. 19-CV-04350 (Merced County Superior Court)
17 (April 6, 2021) (finally approving a \$30,000 PAGA allocation, representing 2% of maximum \$1,194,800
18 in PAGA penalties); *Harris-Foster v University of Phoenix*, , Case No. RG19019028 (Alameda Superior
19 Court)(March 17, 2021)(finally approving a PAGA allocation of \$50,000, representing 1.5% of the
20 maximum \$3,173,200 in PAGA penalties); *Granberry v. Azusa Pacific University*, Case No.
21 19STCV28949 (Los Angeles County Superior Court) (March 5, 2021) (finally approving a PAGA
22 allocation of \$35,000, representing 1.6% of the maximum \$2,119,000 in PAGA penalties); and *Ott v.*
23 *California Baptist University*, Case No. RIC1904830 (Riverside County Superior Court) (January 26,
24 2021) (finally approving a PAGA allocation of \$20,000, representing 3.5% of the maximum \$557,100 in
25 PAGA penalties).

26 39. The allocation is fair and reasonable for several reasons. First, the overall settlement
27 resulted in robust relief for the Class which is what courts look at when assessing the amount attributed
28 to PAGA penalties. In *Gola v. University of San Francisco*, No. CGC-18-565018 (San Francisco Cnty.
Super. Ct. March 3, 2021) a recent case tried by HammondLaw on behalf of adjunct instructors, the court
found that substantial monetary relief in form of statutory penalties under § 226(e) (and fees and costs
plaintiff would seek) acted as a sufficient punishment and deterrent, and awarded only 15% of the full

1 PAGA penalties—and this was a case where defendant did not have a good faith defense and did not
2 change any of its practices to comply after the lawsuit was filed.

3 40. Second, the Court could reduce any award of PAGA penalties as “unjust, arbitrary and
4 oppressive, or confiscatory” under Labor Code § 2699(e)(2) on the theory that Hibu operated in good
5 faith and reasonably believed it was in compliance with the Labor Code, and in light of the fact that Hibu
6 changes its reimbursement policy in April 2022 to bring it into compliance with the labor code.

7 41. Third, Defendant contended that Plaintiffs’ claims for PAGA Penalties would fail for the
8 same reasons the underlying Labor Code claims would fail.

9 42. Fourth, although class certification requirements do not apply to PAGA claims, such
10 claims can be stricken if they are found to be unmanageable, and because only CMs who actually incurred
11 unpaid wages or unreimbursed expenses during a particular pay period could recover PAGA penalties
12 for those violations, Defendant could have disputed that there is a manageable way to determine who was
13 entitled to such penalties.

14 **III. THE SETTLEMENT AVOIDS THE RISKS AND EXPENSE OF FURTHER 15 LITIGATION**

16 43. If the parties continued to litigate this case, the trial court would rule on class certification
17 as to the various claims. Whichever claims cleared that hurdle would potentially face pre-trial dispositive
18 motions, and whichever claims cleared that hurdle would face trial. Regardless of the outcome at trial,
19 the losing party would likely appeal, given that some of the central legal issues in this case have not been
20 conclusively addressed by an appellate court. This process would take years to resolve.

21 44. The settlement avoids these risks associated with the complexities of this litigation.
22 Instead, this settlement provides an early resolution of a dispute, and all Class Members will obtain a
23 recovery in the relatively near future if the settlement is finally approved. Based on the foregoing, I
24 consider this settlement to be fair, reasonable and adequate, and an overall excellent result.

25 **IV. ATTORNEYS’ FEES AND COSTS**

26 45. The Settlement Agreement provides that Defendant will not oppose a request for
27 attorney’s fees of up to 1/3 of the Gross Settlement (i.e. \$46,666.67). This is fair, reasonable and adequate
28 to compensate Class Counsel for the substantial work they have already done to prosecute this Action,
the risk they assumed to agree to take the case in the first place, the great expense spared to the Class by
Class Counsel having achieved a successful resolution, and the continued time and expense that Class
Counsel will incur by administering the fair distribution of the settlement fund should this Court grant
the settlement’s approval.

1 46. Class Counsel agreed to represent Plaintiffs on behalf of the putative Class on a
2 contingency basis, and further agreed to advance all litigation costs. Our significant financial outlays
3 would have been entirely lost if the case were not won, and the amount of Class Counsel's time that
4 would have remained uncompensated in that event would have been substantial. Class Counsel also took
5 on this case despite the known risks associated with Plaintiffs' class allegations as described above and
6 the unpredictable risks that are common to most complex employment class actions that develop only
7 over the course of the litigation. Class Counsel was able to obtain a very favorable settlement for the
8 Class.

9 47. Our firm has spent significant time litigating this case, including interviewing the named
10 Plaintiffs and other putative Class Members, reviewing documents provided by Plaintiffs prior to and
11 after case initiation and information obtained by our firm through our own research, filing a detailed
12 complaint, engaging in extensive informal discovery, analyzing data produced by Hibu, drafting a
13 detailed mediation brief, attending a full-day mediation, negotiating the settlement, drafting the
14 preliminary approval papers; and planning and strategizing throughout the case. Further, we will spend
15 many additional hours obtaining preliminary approval; overseeing the notice process; answering calls
16 and questions from Class Members; preparing the final approval papers; attending the final approval
17 hearing; and overseeing the distribution of the settlement funds.

18 48. The Settlement Agreement's award of reasonable litigation costs of up to \$15,000 is
19 intended for out-of-pocket cost incurred by my firm, including filing and process-serving fees, expenses
20 related to court appearances, copying, legal and other research charges, and the professional fees paid to
21 the Hon. Brian C. Walsh for a full-day mediation session, which was instrumental to reaching the
22 Settlement.

23 49. If the Court grants Preliminary Approval and authorizes the dissemination of notice of the
24 settlement to the class, Class Counsel anticipates filing a Motion for Attorneys' Fees and Costs and
25 Enhancement Awards for Class Representatives that will be scheduled to be heard concurrently with the
26 Motion for Final Approval.

27 50. Class Counsel will submit their lodestar and costs breakdown with their motion for
28 attorneys' fees and costs, which will be noticed to be heard at the same time as the final approval motion.

V. PLAINTIFFS' ENHANCEMENT AWARDS

51. The request for an Enhancement Award of \$5,000 to Plaintiff Kuntz (who attended the full-day mediation) and \$2,500 each to Plaintiffs Hurtado and Pasno is reasonable and fair. The Enhancement Awards are intended to compensate Plaintiffs for their critical roles in this case and the

1 substantial time, effort, and risks they undertook in helping secure the result obtained on behalf of the
2 Settlement Classes. In agreeing to serve as class representatives, Plaintiffs formally agreed to accept the
3 responsibility of representing the interests of all Class Members. They collected and provided documents
4 and diligently assisted Class Counsel in the investigation for the case and in seeking informal discovery.
5 Plaintiffs' participation and assistance were critical to the success of this litigation and the enforcement
6 of Labor Code protections. Without Plaintiffs' commitment to come forward and serve as Class
7 Representatives in prosecuting this lawsuit, this litigation, which enforces the protections of the Labor
8 Code, would not have been brought. Significantly, the named Plaintiffs are granting Defendant a general
9 release of all claims, which is far broader than the release being given by the members of the Class.
10 Finally, none of the Plaintiffs' claims are antagonistic to the interests of the class. Defendant does not
11 oppose this request.

12 **VI. CY PRES BENEFICIARY**

13 52. Subject to Court approval, Bet Tzedek is designated as the *cy pres* beneficiary and
14 recipient of funds associated with any uncashed checks. Bet Tzedek is a non-profit organization that
15 provides access to the civil justice system to clients that are low-income, and for communities victimized
16 by discrimination and civil rights abuses.

17 53. I certify that I do not and my associates do not have any connection to or relationship with
18 Bet Tzedek that could reasonably create the appearance of impropriety as between the selection of the
19 recipient of the money or thing of value and the interests of the class, nor does my law firm.

20 **VII. EFFECT OF THE SETTLEMENT ON ANOTHER PENDING LAWSUIT**

21 54. A putative class and representative action complaint captioned *Lori Cruz v. Hibu, Inc., et*
22 *al.*, United States District Court for the Eastern District of California, Case No. 2:22-cv-00959, has been
23 filed on behalf of a class of Hibu Inc. sales employees in California for violations of Labor Code §§ 204,
24 510, 1194, 1198, 226.7, 512, 1174(d), 1174.5, 210, 226(a), and 2699. A copy of the *Cruz* Complaint is
25 attached as **Exhibit 3**.

26 ///

EXHIBIT 1

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Approved California Wage and Hour Cases

- ***Burleigh v. National University***, Case No. MSC21-00939 (Contra Costa County Superior Court) (August 26, 2022) (certifying HammondLaw as co-class counsel for \$925,000 settlement of Labor Code § 2802 claim on behalf of 1,802 instructors);
- ***Costa v University of Antelope Valley***, Case No. 21STCV18531 (Los Angeles County Superior Court) (August 23, 2022) (Labor Code § 2699 et seq. representative action settlement for \$150,000 for violation of Labor Code §§ 1194, 226(a), 226.2, 226.7, 510, 512, 203, and 2802 on behalf of 55 instructors and Labor Code § 2802 claims on behalf of 54 other employees);
- ***Parson v. La Sierra University***, Case No. CVRI2000104 (Riverside County Superior Court) (May 19, 2022) (certifying HammondLaw as class counsel for \$578,220 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 381 adjunct instructors and Labor Code § 2802 claims on behalf of 739 other employees);
- ***Chindamo v Chapman University***, Case No. 30-2020-01147814-CU-OE-CXC (Orange County Superior Court) (April 15, 2022) (certifying HammondLaw as co-class counsel for \$1,150,00 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, claims on behalf of 1,374 adjunct instructors and Labor Code § 2802 claims on behalf of 4,120 other employees);
- ***Sweetland-Gil v University of the Pacific***, Case No. STK-CV-UOE-2019-0014682 (San Joaquin County Superior Court) (March 4, 2022) (certifying HammondLaw as class counsel for \$1,800,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,100 adjunct instructors);
- ***Senese v. University of San Diego***, Case No. 37-2019-00047124-CU-OE-CTL (San Diego County Superior Court) (February 8, 2022) (certifying HammondLaw as co-class counsel for \$3,892,750 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 2,071 adjunct instructors);
- ***Solis et al. v Concordia University Irvine***, Case No. 30-2019-01114998-CU-OE-CXC (Orange County Superior Court) (February 3, 2022) (certifying HammondLaw as class counsel for \$890,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 203, and 2802 claims on behalf of 778 adjunct instructors);
- ***McCoy et v Legacy Education LLC***, Case No. 19STCV2792 (Los Angeles County Superior Court) (November 15, 2021) (Labor Code § 2698 et seq. representative action settlement for \$76,000 for violation of Labor Code §§ 1194, 226(a), 226.7, 512, 203, and 2802 on behalf of 31 instructors);
- ***Merlan v Alliant International University***, Case No. 37-2019-00064053-CU- OE-CTL (San Diego County Superior Court) (November 2, 2021) (certifying HammondLaw as co-class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 803 adjunct instructors);

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- ***Stupar et al. v University of La Verne***, Case No. 19STCV33363 (Los Angeles County Superior Court) (October 14, 2021) (certifying HammondLaw as class counsel for \$2,450,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512, and 203 claims on behalf of 1,364 adjunct instructors);
- ***Normand et al. v Loyola Marymount University***, Case No. 19STCV17953 (Los Angeles County Superior Court) (September 9, 2021) (certifying HammondLaw as class counsel for \$3,400,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,655 adjunct instructors);
- ***Veal v Point Loma Nazarene University***, Case No. 37-2019-00064165-CU-OE-CTL (San Diego County Superior Court) (August 27, 2021) (certifying HammondLaw as class counsel for \$711,500 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 670 adjunct instructors);
- ***Pillow et al. v Pepperdine University***, Case No. 19STCV33162 (Los Angeles County Superior Court) (July 28, 2021) (certifying HammondLaw as class counsel for \$940,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,547 adjunct instructors);
- ***Moore et al v Notre Dame De Namur University***, Case No. 19-CIV-04765 (San Mateo County Superior Court) (July 1, 2021) (certifying HammondLaw as class counsel for \$882,880 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 397 adjunct instructors);
- ***Mooiman et al. v Saint Mary's College of California***, Case No. C19-02092 (Contra Costa County Superior Court) (June 10, 2021) (certifying HammondLaw as class counsel for \$1,700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 760 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 2,212 other employees);
- ***Peng v The President and Board of Trustees of Santa Clara College***, Case No. 19CV348190 (Santa Clara County Superior Court) (April 21, 2021) (certifying HammondLaw as class counsel for \$1,900,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, and 203 claims on behalf of 1,017 adjunct instructors and Labor Code Code § 226(a) claim on behalf of 5,102 other employees);
- ***Morse v Fresno Pacific University***, Case No. 19-CV-04350 (Merced County Superior Court) (April 6, 2021) (certifying HammondLaw as class counsel for \$1,534,725 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 203 claims on behalf of 861 adjunct instructors);
- ***Miner, et al. v ITT Educational Services, Inc.***, Case No. 3:16-cv-04827-VC (N.D. Cal.) (March 19, 2021) (certifying HammondLaw as class counsel for \$5.2 million settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7, 512 and 2802 claims on behalf of 1,154 adjunct instructors);
- ***Harris-Foster v. University of Phoenix***, Case No. RG19019028 (Alameda County Superior Court, March 17, 2021) (certifying HammondLaw as class counsel for \$2,863,106 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 putative class action on behalf of 3,447 adjunct instructors);

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- ***Granberry v. Azusa Pacific University***, Case No. 19STCV28949 (Los Angeles County Superior Court, March 5, 2021) (certifying HammondLaw as class counsel for \$1,112,100 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 2802 claims on behalf of 1,962 adjunct instructors);
- ***Ott v. California Baptist University***, Case No. RIC1904830 (Riverside County Superior Court, January 26, 2021) (certifying HammondLaw as co-class counsel for \$700,000 settlement of Labor Code §§ 1194, 226(a), 226.2, 226.7 and 512 claims on behalf of 958 adjunct instructors);
- ***Pereltsvaig v. Cartus Corporation***, Case No. 19CV348335 (Santa Clara County Superior Court, January 13, 2021) (certifying HammondLaw as class counsel in \$300,000 settlement of Labor Code §§ 226.8(a), 1194, 226(a), 226.7, 510, 512, and 2802 claims on behalf of 126 instructors);
- ***Morrison v. American National Red Cross***, Case No. 19-cv-02855-HSG (N.D. Cal., January 8, 2021) (certifying HammondLaw as class counsel in a \$377,000 Settlement of Labor Code §§ 1194, 226(a), 226.7, 510, 512 and 2802 claims on behalf of 377 instructors who taught training courses);
- ***Brown v. Cernx***, Case No. JCCP004971 (Cal. Sup. Ct. Alameda Cty. July 14, 2020) (certifying HammondLaw as co-class counsel in \$350,000 settlement of Labor Code §§ 1194, 226, 226.7, 510, 512, and 2802 claims on behalf of 309 amazon couriers);
- ***Stempien v. DeVry University***, Case No. RG19002623 (Cal. Sup. Ct. Alameda Cty. June 30, 2020) (certifying HammondLaw as class counsel for \$1,364,880 settlement Labor Code §§ 1194, 226, 226.2, 226.7, and 2802 claims on behalf of 498 adjunct instructors);
- ***McCoy v. Concorde.***, Case No. 30-2017-00936359-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. July 2, 2019) (certifying HammondLaw as class counsel for \$2,500,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 putative claims on behalf of 636 adjunct instructors);
- ***Hogue v. YRC***, Case No. 5:16-cv-01338 (C.D. Cal. June 24, 2019) (certifying HammondLaw and A&T as co-class counsel for \$700,000 settlement of Labor Code §§ 1194, 226.2, 226.7, and 2802 claims on behalf of 225 truck drivers);
- ***Sands v. Gold's Gym***, Case No. BC660124 (Cal. Sup. Ct. Los Angeles Cty. March 20, 2019) (Labor Code § 2698 *et seq.* representative action settlement for \$125,000 for violation of Labor Code § 1194, 2802 and 246 *et seq.* claims on behalf of 106 fitness instructors);
- ***Garcia v. CSU Fullerton.***, Case No. 30-2017-00912195-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. February 15, 2019) (certifying HammondLaw as class counsel for \$330,000 settlement of Labor Code §§ 1194, 226, 226.7, and 512 claims on behalf of 127 adjunct instructors);
- ***Pereltsvaig v. Stanford***, Case No. 17-CV-311521 (Cal. Sup. Ct. Santa Clara Cty. January 4, 2019) (certifying HammondLaw as class counsel for \$886,890 settlement of Labor Code §§ 1194, 226, 226.7, 512, 2802 and 2699 claims on behalf of 398 adjunct instructors);

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- ***Moss et al. v. USF Reddaway, Inc.***, Case No. 5:15-cv-01541 (C.D. Cal. July 25, 2018) (certifying HammondLaw and A&T as co-class counsel for \$2,950,000 settlement of Labor Code §§ 1194, 226, 226.7, and 201-203 claims on behalf of 538 truck drivers);
- ***Beckman v. YMCA of Greater Long***, Case No. BC655840 (Cal. Sup. Ct. Los Angeles Cty. June 26, 2018) (Labor Code § 2698 *et seq.* representative action settlement for \$92,500 for violation of Labor Code § 1194 and 226(a) claims on behalf of 101 fitness instructors);
- ***Maldonado v. Heavy Weight Transport, Inc.***, Case No. 2:16-cv-08838 (C.D. Cal. December 11, 2017) (certifying HammondLaw and A&T as co-class counsel for \$340,000 settlement of Labor Code §§ 1194, 226, 226.2, 226.7, 226, 201-203, and 2699 claims on behalf of 160 truck drivers);
- ***Hillman v. Kaplan***, Case No. 34-2017-00208078 (Cal. Sup. Ct. Sacramento Cty. December 7, 2017) (certifying HammondLaw as class counsel for \$1,500,000 settlement of Labor Code §§ 1194, 226, 226.7, 201-203 and 2802 claims on behalf of 506 instructors);
- ***Bender et al. v. Mr. Copy, Inc.***, Case No. 30-2015-00824068-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. October 13, 2017) (certifying HammondLaw and A&T as co-class counsel for \$695,000 settlement of Labor Code §2802 claims on behalf of approximately 250 outside sales representatives);
- ***Rios v. SoCal Office Technologies***, Case No. CIVDS1703071 (Cal. Sup. Ct. San Bernardino Cty. September 6, 2017) (certifying HammondLaw and A&T as co-class counsel for \$495,000 settlement of Labor Code §2802 claims on behalf of approximately 180 outside sales representatives);
- ***Russell v. Young's Commercial Transfer, Inc.***, Case No. PCU265656 (Cal. Sup. Ct. Tulare Cty. June 19, 2017) (certifying HammondLaw and A&T as co-class counsel for \$561,304 settlement of Labor Code §§ 1194, 226, 226.2, and 201-203 claims on behalf of 962 truck drivers);
- ***Keyes v. Valley Farm Transport, Inc.***, Case No. FCS046361 (Cal. Sup. Ct. Solano Cty. May 23, 2017) (certifying HammondLaw and A&T as co-class counsel for \$497,000 settlement of Labor Code § 226, 1194, 512 and 2698 *et seq.* claims on behalf of 316 truck drivers);
- ***Numi v. Interstate Distributor Co.***, Case No. RG15778541 (Cal. Sup. Ct. Alameda Cty. March 6, 2017) (certifying HammondLaw and A&T as co-class counsel for \$1,300,000 settlement of Labor Code §§ 1194, 226.2 and 2802 claims on behalf of approximately 1,000 truck drivers);
- ***Keyes v. Vitek, Inc.***, Case No. 2016-00189609 (Cal. Sup. Ct. Sacramento Cty. February 17, 2017) (\$102,000 settlement of PAGA representative action for violation of Labor Code § 226.8 on behalf of 90 truck drivers);
- ***Martinez v. Estes West dba G.I. Trucking, Inc.***, Case. BC587052 (Cal. Sup. Ct. L.A. Cty., April 4, 2017) (certifying HammondLaw and A&T as co-class counsel for \$425,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 156 truck drivers);

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- ***Sansinena v. Gazelle Transport Inc.***, Case No. S1500-CV- No 283400 (Cal. Sup. Ct. Kern Cty. December 8, 2016) (certifying HammondLaw and A&T as co-class counsel for \$264,966 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 314 truck drivers);
- ***Cruz v. Blackbelt Enterprises, Inc.***, Case No. 39-2015-00327914-CU-OE-STK (Cal. Sup. Ct. San Joaquin Cty. September 22, 2016) (certifying HammondLaw and A&T as co-class counsel for \$250,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 79 truck drivers);
- ***Araiza et al. v. The Scotts Company, L.L.C.***, Case No. BC570350 (Cal. Sup. Ct. L.A. Cty. September 19, 2016) (certifying HammondLaw and A&T as co-class counsel for \$925,000 settlement of Labor Code §226, 510, 512 and 2802 claims on behalf of approximately 570 merchandisers; and Labor Code 226(a) claims on behalf of approximately 120 other employees);
- ***Dixon v. Hearst Television, Inc.***, Case No. 15CV000127 (Cal. Sup. Ct. Monterey Cty. September 15, 2016) (certifying HammondLaw as class counsel for a \$432,000 settlement of Labor Code § 2802 claims on behalf of approximately 55 outside sales representatives);
- ***Garcia et al. v. Zoom Imaging Solutions, Inc.*** SCV0035770 (Cal. Sup. Ct. Placer Cty. September 8, 2016) (certifying HammondLaw and A&T as co-class counsel for \$750,000 settlement of Labor Code § 510, 512, 1194 and 2802 claims on behalf of approximately 160 sales representatives and service technicians);
- ***O’Beirne et al. v. Copier Source, Inc. dba Image Source***, Case No. 30-2015-00801066-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. September 8, 2016) (certifying HammondLaw and A&T as co-class counsel for \$393,300 settlement of Labor Code §2802 claims on behalf of approximately 132 outside sales representatives);
- ***Mead v. Pan-Pacific Petroleum Company, Inc.***, Case No. BC555887 (Cal. Sup. Ct. L.A. Cty. August 30, 2016) (certifying HammondLaw and A&T as co-class counsel for \$450,000 settlement of Labor Code §§ 1194, 226, and 201-203 claims on behalf of approximately 172 truck drivers);
- ***Lange v. Ricoh Americas Corporation***, Case No. RG136812710 (Cal. Sup. Ct. Alameda Cty. August 5, 2016) (certifying HammondLaw as co-class counsel for \$1,887,060 settlement of Labor Code § 2802 claims on behalf of approximately 550 sales representatives);
- ***Alcazar v. US Foods, Inc. dba US Foodservice***, Case No. BC567664 (Cal. Sup. Ct. L.A. Cty. March 18, 2016) (certifying HammondLaw and A&T as co-class counsel for a \$475,000 settlement on behalf of approximately 634 truck drivers);
- ***Harris v. Toyota Logistics***, Case No. C 15-00217 (Cal. Sup. Ct. Contra Costa Cty. February 9, 2016) (certifying HammondLaw and A&T as co-class counsel for \$550,000 settlement reached on behalf of approximately truck 125 drivers);

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- ***Albanez v. Premium Retail Services Inc.***, Case No. RG1577982 (Cal. Sup. Ct. Alameda Cty. January 29, 2016) (Private Attorney General Act Settlement for \$275,000 on behalf of approximately 38 employees);
- ***Garcia et al v. Sysco Los Angeles, et al.***, Case No. BC560274 (Cal. Sup. Ct. L.A. Cty. November 12, 2015) (certifying HammondLaw and A&T as co-class counsel for a \$325,000 settlement on behalf of approximately 500 truck drivers);
- ***Cooper et al. v. Savage Services Corporation, Inc.***, Case No. BC578990 (Cal. Sup. Ct. L.A. Cty. October 19, 2015) (certifying HammondLaw and A&T as co-class counsel for \$295,000 settlement on behalf of approximately 115 truck drivers);
- ***Gallardo et al. v. Canon Solutions America, Inc.***, Case No. CIVDSS1500375 (Cal. Sup. Ct. San Bernardino Cty. August 5, 2015) (certifying HammondLaw and A&T as co-class counsel for \$750,000 settlement on behalf for approximately 320 outside sales representatives);
- ***Glover v. 20/20 Companies, Inc.***, Case No. RG14748879 (Cal. Sup. Ct. Alameda Cty. August 3, 2015) (Private Attorney General Act Settlement for \$475,000 on behalf of approximately 273 independent contractors);
- ***Mayton et al v. Konica Minolta Business Solutions USA, Inc.***, Case No. RG12657116 (Cal. Sup. Ct. Alameda Cty. June 22, 2015) (certifying HammondLaw as co-class counsel for \$1,225,000 settlement on behalf for approximately 620 outside sales representatives);
- ***Garza, et al. v. Regal Wine Company, Inc. & Regal III, LLC***, Case No. RG12657199 (Cal. Sup. Ct. Alameda Cty. February 21, 2014) (certifying HammondLaw as class counsel for \$1.7 million settlement on behalf of approximately 317 employees);
- ***Moy, et al. v. Young's Market Co., Inc.***, Case No. 30-2011-00467109-CU-OE-CXC (Cal. Sup. Ct. Orange Cty. November 8, 2013) (certifying HammondLaw as co-class counsel for \$2.3 million settlement on behalf of approximately 575 sales representatives);
- ***Gagner v. Southern Wine & Spirits of America, Inc.***, Case No. 3:10-cv-10-04405 JSW (N.D. Cal. December 11, 2012) (certifying HammondLaw as co-class counsel for \$3.5 million settlement reached on behalf of approximately 870 sales representatives);
- ***Downs, et al. v. US Foods, Inc. dba US Foodservice***, Case No. 3:10-cv-02163 EMC (N.D. Cal. September 12, 2012) (certifying HammondLaw as co-class counsel for \$3 million settlement reached on behalf of approximately 950 truck drivers)

Approved California Consumer Cases

- ***Rodriguez v River City Bank***, Case No. 1-13-cv-257676 (Cal. Sup. Ct. Sacramento Cty., October 26, 2022) (approving \$140,000 settlement of Cal. Bus.

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Prof. Code §§ 17200, Civil Code § 1798.80 and 1798.100 claims on behalf of 16,417 River City Bank customers);

- ***Siciliano et al. v. Apple***, Case No. 1-13-cv-257676 (Cal. Sup. Ct. Santa Clara Cty. November 2, 2018) (approving \$16,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 3.9 million California subscribers to Apple InApp subscriptions);
- ***In re Ashley Madison Customer Data Security Breach Litigation***, Case No. 4:15-cv-02669 JAR (E.D. Mis. November 20, 2017) (HammondLaw appointed to the executive committee in \$11.2 million settlement on behalf of 39 million subscribers to ashleymadison.com whose information was compromised in the Ashley Madison data breach);
- ***Gargir v. SeaWorld Inc.***, Case No. 37-2015-00008175-CU-MC-CTL (Cal. Sup. Ct. San Diego Cty. October 21, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims class action on behalf of 88,000 subscribers to SeaWorld's annual park passes);
- ***Davis v. Birchbox, Inc.***, Case No. 3:15-cv-00498-BEN-BGS (S.D. Cal. October 14, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$1,572,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 149,000 subscribers to Birchbox's memberships);
- ***Goldman v. LifeLock, Inc.*** Case No. 1-15-cv-276235 (Cal. Sup. Ct. Santa Clara Cty. February 5, 2016) (certifying HammondLaw and Berman DeValerio as co-class counsel in \$2,500,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 300,000 California subscribers to Lifelock's identity protection programs); and
- ***Kruger v. Kiwi Crate, Inc.*** Case No. 1-13-cv-254550 (Cal. Sup. Ct. Santa Clara Cty. July 2, 2015) (certifying HammondLaw as class counsel in \$108,000 settlement of Cal. Bus. Prof. Code §§ 17603, 17200, and 17535 claims on behalf of 5,400 California subscribers to Kiwi Crate's subscriptions).

EXHIBIT 2

HAMMONDLAW

A PROFESSIONAL CORPORATION

FACSIMILE: 310-295-2385

11780 W. Sample Road, Suite 103
Coral Springs, FL 33065

TELEPHONE: 310-601-6766

January 26, 2022

VIA LWDA WEBSITE

Labor & Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL

Kevin Jasper
Chief Executive Officer
Hibu, Inc.
221 3rd Ave SE, Suite 300
Cedar Rapids, Iowa 52401

**Re: Private Attorneys General Act Notice of Claims Pursuant to
California Labor Code § 2699**

Dear Mr. Jasper,

This letter is to provide notice of claims for penalties under the California Labor Code's Private Attorneys General Act, as amended, Cal. Labor Code § 2698 *et seq.* ("PAGA").

We represent Rodella Hurtado ("Plaintiff") in connection with her representative claims against Hibu, Inc. ("Hibu" or "Defendant") on behalf of herself and all individuals employed as Account Representatives, Account Executives, Sales Executives, or in a similar capacity by Hibu in California ("Aggrieved Employees") from one year and 61 days prior to the postmark date of this Notice through to trial ("PAGA Period")¹ for the following violation:

- (a) failure to reimburse business expenses in violation of Labor Code § 2802;
- (b) failure to pay overtime wages in violation of Labor Code § 510 and IWC Wage Order No. 4-2001, § 3;

¹ The PAGA Period goes back one year and 61 days for the following reason. On May 29, 2020, in response to COVID-19, the Judicial Council of California adopted Emergency Rule 9, under which the statutes of limitations "for civil causes of action that exceed 180 days [were] tolled from April 6, 2020, until October 1, 2020." As such, for any claims that were accruing throughout this tolling period, the statute of limitations is extended by 178 days less the number of days elapsed from October 1, 2020 to one year prior to the postmark date of this notice. Thus, the PAGA Period is one year and 61 days through trial.

- (c) failure to pay compensation due upon discharge in violation of Labor Code §§ 201-202;
and
- (d) failure to issue accurate itemized wage statements in violation of Labor Code § 226.

FACTUAL BACKGROUND

Failure to Reimburse Business Expenses (Labor Code § 2802) Claims:

During the PAGA Period, Defendant employed Plaintiff and Aggrieved Employees to sell its advertising services. Defendant did not provide offices to Aggrieved Employees and required and/or expected them to perform work duties from their home offices and, except during the times when government stay-at-home orders were in effect as a result of Covid-19, in the field when visiting prospective clients. In order to carry out their job duties, Aggrieved Employees used and paid for out of pocket for, including but not limited to, their home internet, software, personal cell phones, printing supplies, and utilities (“Home Office Expenses”). Aggrieved Employees were also required to purchase mobile apps, and pay for all their mileage expenses, including between their home offices and client locations. Thus, Aggrieved Employees were entitled to reimbursement for these necessarily incurred business expenses under Labor Code § 2802.

Defendant reimbursed Aggrieved Employees a flat amount each pay period toward their expenses. However, the amount was insufficient to fully reimburse them for the expenses they incurred in carrying out their job duties for Defendant, which Defendant knew or should have known.

Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation of Labor Code § 2802.

Failure to Pay Overtime Wages (Labor Code § 510 and Wage Order No. 4, § 3) Claims:

During the PAGA Period, Defendant required Aggrieved Employees to participate in a 3-week training program at the outset of their employment. During the 3 weeks of training Aggrieved Employees did not sell Defendant’s advertising services. Instead, Aggrieved Employees were required to attend classes typically five days per week, from approximately 8:00 am to 6:00 p.m. The first two weeks took place in Pennsylvania, except when the shelter in place orders were in effect due to the Covid-19 pandemic. The third week was typically conducted virtually, with Aggrieved Employees attending classes online from their homes in California. At the end of each day, Defendant required Aggrieved Employees to complete various assignments for the next day. Thus, Aggrieved Employees worked over 8 hours in a day and/or over 40 hours in a week, including the time they spent traveling between California and Pennsylvania.

As Aggrieved Employees did not sell Defendant’s services and did not earn commissions, they did not qualify for the outside salesperson exemption or the inside salesperson exemption. AS a result, they were non-exempt employees entitled to overtime pay for all hours worked over 8 in day and/or over 40 in a week pursuant to Labor Code § 510 and Wage Order No. 4, § 3, including

during the time they attended training outside California because their principal place of work was in California. *See Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762, 770 (2020).

Defendant, however, only paid Aggrieved Employees a salary and a small additional training stipend of \$175 per week. Defendant did not require Aggrieved Employees to track their hours and did not pay them overtime wages.

Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

Failure to Pay All Wages Owed upon Discharge from Employment (Labor Code §§ 201-202) Claims:

Plaintiff's employment with Hibu ended in approximately November 2021. As a result of failing to pay overtime pay, Hibu failed to pay Plaintiff and other formerly employed Aggrieved Employees all compensation due and owing to them upon discharge from employment, in violation of Labor Code §§ 201-202.

Accordingly, pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

Failure to Issue Accurate Wage Statements (Labor Code § 226(a)(2) and (9)) Claims:

As the Aggrieved Employees were non-exempt employees, Hibu was required to furnish to Aggrieved Employees wage statements that provided a breakdown of their hours worked and applicable hourly rates pursuant to Labor Code § 226(a)(2) and (a)(9). So long as an employee is non-exempt, the requirement to provide hours and hourly rates applies whether an employee is paid a salary, by the piece, or commission.

However, Hibu did not require Aggrieved Employees to record their working hours, and did not list hours and hourly rates on their wage statements.

As a result of failing to comply with Labor Code § 226(a), pursuant to Labor Code § 226.3, Plaintiff and Aggrieved Employees are entitled to two hundred fifty dollars (\$250) for each initial violation, and one thousand dollars (\$1,000) for each subsequent violation. *See Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties under PAGA” for the violation of Labor Code § 226(a).) Alternatively, pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

///

///

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform Hibu and the Labor and Workforce Development Agency of our intent to pursue a lawsuit against Hibu that will include a claim for civil penalties under the PAGA to be brought by the Plaintiff as a representative of the State, individually, and on behalf of all other Aggrieved Employees based on the Labor Code violations alleged above.

Yours truly,

Julian Hammond

EXHIBIT 3

FILED
Superior Court Of California,
Sacramento
04/15/2022
nzeyaad
By _____, Deputy
Case Number:
34-2022-00313807

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SACRAMENTO**

9 LORI CRUZ, an individual, on behalf of herself
10 and all others similarly situated,

11 Plaintiff,

12 v.

13
14 HIBU, INC., a Delaware Corporation; and
15 DOES 1 TO 50,

16 Defendants.

Case Number: 34-2022-313807

**First Amended Class and Collective Action
Complaint For:**

1. Failure to Pay All Overtime Wages,
2. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
3. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
4. Failure to Maintain Accurate Employment Records,
5. Failure to Pay Wages Timely during Employment,
6. Failure to Furnish Accurate Itemized Wage Statements,
7. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17210),
8. Violations of the Fair Labor Standards Act (29 U.S.C. § 207 and § 216); and
9. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004

BY FAX

1 G. Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof.
2 Code, §§ 17200–17210).

3 5. This action is also a representative action brought pursuant to the California Labor Code
4 Private Attorneys General Act of 2004 ("PAGA"), codified at California Labor Code sections 2698
5 through 2699.6.

6 6. The "PAGA Period" as used herein, is defined as the period from January 12, 2021, and
7 continuing into the present and ongoing.

8 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
9 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
10 *employed by Defendants as sales employees in California during the PAGA Period* (the "Aggrieved
11 Employees").

12 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
13 Welfare Commission ("IWC") Wage Order applicable to the facts of this case is IWC Wage Order 4-
14 2001 (the "Applicable Wage Order") and possibly others that may be applicable. (Cal. Code of Regs.,
15 tit. 8, § 11040.) Plaintiff reserves the right to amend or modify the definition of "Applicable Wage
16 Order" with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
17 are discovered in litigation.

18 **II. JURISDICTION & VENUE**

19 9. This Court has subject matter jurisdiction over all causes of action asserted herein
20 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
21 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
22 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
23 is subject to adjudication in the courts of the State of California.

24 10. This Court has personal jurisdiction over Defendants because Defendants have caused
25 injuries in the County of Sacramento and the State of California through their acts, and by their
26 violation of the California Labor Code and California state common law. Defendants transact millions
27 of dollars of business within the State of California. Defendants own, maintain offices, transact
28 business, have an agent or agents within the County of Sacramento, and/or otherwise are found within

1 the County of Sacramento, and Defendants are within the jurisdiction of this Court for purposes of
2 service of process.

3 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
4 Code of Civil Procedure. Defendants operate within California and do business within Sacramento
5 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
6 Defendants' employees identified above within Sacramento County and surrounding counties where
7 Defendants may remotely operate.

8 **III. THE PARTIES**

9 **A. PLAINTIFF**

10 12. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
11 of California residing in the State of California. Defendants employed Plaintiff

12 13. Plaintiff brings this action on behalf of herself and the following class pursuant to
13 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
14 *Defendants as sales employees in California during the Class Period* (the "Class Members").

15 14. The Class Members, at all times pertinent hereto, are or were employees of Defendants
16 during the relevant statutory period.

17 15. Plaintiff also brings this action on behalf of himself and the State of California, as a
18 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*
19 *who are or were employed by Defendants as sales employees in California during the PAGA Period*
20 (the "Aggrieved Employees").

21 **B. DEFENDANTS**

22 16. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
23 to and doing business in Sacramento County and is and/or was the legal employer of Plaintiff and the
24 other Class Members during the applicable statutory periods. Plaintiff and the other Class Members
25 were, and are, subject to Defendants' policies and/or practices complained of herein and have been
26 deprived of the rights guaranteed to them by: California Labor Code sections 204, 210, 226, 226.3,
27 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be
28

1 applicable; California Business and Professions Code sections 17200 through 17210 (“UCL”); and the
2 Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040).

3 17. Plaintiff is informed and believes, and based thereon alleges, that during the Class
4 Period, Defendants did (and continue to do) business in the State of California, County of Sacramento.

5 18. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
8 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
11 and the other Class Members to be subject to the unlawful employment practices, wrongs, injuries, and
12 damages complained of herein.

13 19. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and/or are the employers of Plaintiff and the other Class Members. At all
15 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged
16 to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the
17 agents, servants, and employees of each and every one of the other Defendants, as well as the agents
18 of all Defendants, and at all times herein mentioned were acting within the course and scope of said
19 agency and employment. Defendants, and each of them, approved of, condoned, or otherwise ratified
20 every one of the acts or omissions complained of herein.

21 20. At all relevant times, Defendants, and each of them, were members of and engaged in a
22 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
23 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed,
24 and believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff
25 and the other Class Members.

26 **IV. COMMON FACTS & ALLEGATIONS**

27 21. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and were
28 at all relevant times, employed by the Defendants within the State of California.

1 22. The Class Members are, and were, at all relevant times, non-exempt employees for the
2 purposes of overtime, rest breaks, meal periods, and the other claims alleged in this complaint.

3 23. Specifically, Plaintiff was employed by Defendants within the statutory Class Period,
4 working as Digital Account Executives for Defendants. Plaintiff's primary duty is to make sales calls
5 from her home office. She does not earn more than half her income from commissions.

6 **A. OVERTIME VIOLATIONS**

7 24. Labor Code section 510 requires employers to compensate employees who work more
8 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
9 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
10 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
11 employees at no less than twice the regular rate of pay when an employee works more than twelve
12 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
13 subd. (a).) These rules are also reflected in the Applicable Wage Order.

14 25. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Class
15 Members could not then agree and cannot now agree to work for a lesser wage than the amount
16 provided by Labor Code sections 510 or the Applicable Wage Order.

17 26. Here, Defendants violated their duty to accurately and completely compensate the Class
18 Members for all overtime worked. The Class Members periodically worked hours that entitled them
19 to overtime compensation under the law but were not fully compensated for those hours.

20 27. Class Members are given strict quotas for the number of sales calls to complete each
21 day. They are expected to work as many hours as necessary to achieve those quotas. Their hours of
22 work are not tracked.

23 28. Class members are paid on a salary basis. However, they are not exempt.

24 29. These actions were and are in clear violation of California's overtime laws as set forth
25 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8,
26 § 11040.) As a result of Defendants' faulty policies and practices, the Class Members were not
27 compensated for all hours worked or paid accurate overtime compensation.

28

1 **B. REST BREAK VIOLATIONS**

2 30. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
3 and are required to provide the Class Members with compensated, duty-free rest periods of not less
4 than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Order, an
5 employer must authorize and permit all employees to take ten minute duty free rest periods for every
6 major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11040.)

7 31. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
8 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
9 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
10 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees
11 one additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or
12 recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage Orders set when
13 and for how long the rest period must take place and the Labor Code establishes that violations of the
14 IWC Wage Orders are unlawful and sets forth the premium pay employer must pay their employees
15 when employers fail to provide rest periods.

16 32. The California Supreme Court has held that, during required rest periods, “employers
17 must relieve their employees of all duties and relinquish any control over how employees spend their
18 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
19 control over employees during rest periods requires that employees be “free to leave the employer’s
20 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
21 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
22 policy:

23 “An employer is required to authorize and permit the amount of rest break time
24 called for under the wage order for its industry. If it does not—if, for example,
25 it adopts a uniform policy authorizing and permitting only one rest break for
26 employees working a seven-hour shift when two are required—it has violated

1 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
2 Cal.4th 1004, 1033.)

3 33. Here, Defendants did not have a policy that permitted the Class Members to take
4 compliant duty-free rest breaks. At all relevant times, the Class Members were periodically not
5 provided with legally-compliant and timely rest periods of at least ten minutes for each four hour work
6 period, or major fraction thereof. As a result, the Class Members were periodically unable to take
7 compliant rest periods.

8 34. Since Defendants did not offer the Class Members the opportunity to receive a
9 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to skip those
10 breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an
11 employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees
12 voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at
13 p. 1033 [“No issue of waiver ever arises for a rest break that was required by law but never authorized;
14 if a break is not authorized, an employee has no opportunity to decline to take it.”].)

15 35. In addition to failing to authorize and permit compliant rest periods, the Class Members
16 were not compensated with one hour’s worth of pay at their regular rate of compensation when they
17 were not provided with a compliant rest period in accordance with Labor Code section 226.7,
18 subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
19 Order.

20 36. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other Class
21 Members, rest period premiums and penalties.

22 **C. MEAL BREAK VIOLATIONS**

23 37. Labor Code section 512 and the Applicable Wage Order require employers to provide
24 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
25 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
26 more than five hours per day without providing the employee with a meal period of not less than 30
27 minutes”]; Cal. Code of Regs., tit. 8, § 11040 [“No employer shall employ any person for a work
28 period of more than five (5) hours without a meal period of not less than 30 minutes”].)

1 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
2 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
3 employ an employee for a work period of more than 10 hours per day without providing the employee
4 with a second meal period of not less than 30 minutes . . .”].)

5 38. During the applicable statutory periods here, the Class Members were denied legally-
6 compliant and timely off-duty meal periods of at least thirty minutes due to Defendants’ failure to have
7 a policy authorizing meal periods. Defendants thus violated Labor Code section 512 and the Applicable
8 Wage Order by failing to advise, authorize, or permit the Class Members to receive thirty-minute, off-
9 duty meal periods within the first five hours of their shifts.

10 39. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
11 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
12 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
13 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
14 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
15 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
16 Regs., tit. 8, § 11040 [“If an employer fails to provide an employee a meal period in accordance with
17 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
18 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)

19 40. Accordingly, for each day that the Class Members did not receive compliant meal
20 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
21 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Class Members
22 applicable meal period premiums for many workdays that the employees did not receive a compliant
23 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
24 Order.

25 41. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and the Class
26 Members, meal period premiums and penalties.

27
28

1 **D. UNTIMELY WAGES DURING EMPLOYMENT**

2 42. Labor Code section 204 expressly requires employers who pay employees on a weekly,
3 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
4 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
5 Labor Code section 204 subject to a penalty of:

6 “(1) For any initial violation, one hundred dollars (\$100) for each
7 failure to pay each employee.

8 “(2) For each subsequent violation, or any willful or intentional
9 violation, two hundred dollars (\$200) for each failure to pay each
10 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.
11 Code, § 210, subd. (a).)

12 43. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
13 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
14 subd. (a).)

15 44. Due to Defendants’ failure to pay the Class Members the overtime wages described
16 above, along with rest and meal break premiums, Defendants failed to timely pay the Class Members
17 within seven calendar days following the close of payroll in accordance with Labor Code section 204
18 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.
19 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure
20 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

21 **E. WAGE STATEMENT VIOLATIONS**

22 45. Defendants also failed to provide accurate itemized wage statements in accordance with
23 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
24 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
25 statement in writing showing:

- 26 (1) The gross wages earned;
27 (2) The total hours worked by the employee;

28

- 1 (3) The number of piece-rate units earned and any applicable piece
- 2 rate if the employee is paid on a piece rate basis;
- 3 (4) All deductions, provided that all deductions made on written
- 4 orders of the employee may be aggregated and shown as one item;
- 5 (5) The net wages earned;
- 6 (6) The inclusive dates of the period for which the employee is paid;
- 7 (7) The name of the employee and only the last four digits of his or
- 8 her social security number or an employee identification number other
- 9 than a social security number;
- 10 (8) The name and address of the legal entity that is the employer; and
- 11 (9) All applicable hourly rates in effect during the pay period and the
- 12 corresponding number of hours worked at each hourly rate by the
- 13 employee.

14 46. Due to Defendants' failure to track the hours of the Class Members, or pay overtime as
15 described above, the wage statements issued do not indicate the correct amount of gross wages earned,
16 total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have
18 violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

19 47. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
20 intentionally failed to provide the Class Members with accurate itemized wage statements in violation
21 of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Class
22 Members with wage statements required by California law but nevertheless failed to correct their
23 unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134
24 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the
25 "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on
26 commission" even though it believed that employees paid solely on commission or commission and
27 salary "are exempt and therefore we do not record hours on a wage statement."].)

28

1 **F. RECORDKEEPING VIOLATIONS**

2 48. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
3 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in
4 pertinent part, as follows:

5 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
6 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
7 violation in an initial citation and one thousand dollars (\$1,000) per employee
8 for each violation in a subsequent citation, for which the employer fails to
9 provide the employee a wage deduction statement or fails to keep the records
10 required in subdivision (a) of Section 226. The civil penalties provided for in
11 this section are in addition to any other penalty provided by law.” (Lab. Code,
12 § 226.3, emphasis added.)

13 49. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
14 Defendants, to:

15 “Keep, at a central location in the state or at the plants or establishments at which
16 employees are employed, payroll records showing the hours worked daily by
17 and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments. These records shall be kept in accordance with rules established
20 for this purpose by the commission, but in any case shall be kept on file for not
21 less than three years. An employer shall not prohibit an employee from
22 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
23 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

24 50. As explained in detail above, Defendants failed to provide the Class Members with
25 accurate itemized wage statements. Defendants did so, in part, because they failed to accurately track
26 hours worked by the Class Members. Defendants have thus failed to keep accurate records of the “total
27 hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are
28

1 therefore subject to the penalties provided by Labor Code section 226.3. These penalties are “in
2 addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

3 51. The failure to accurately track hours worked also resulted in a failure of Defendants to
4 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
5 including Plaintiff and the other Class Members, in violation of Labor Code section 1174, subdivision
6 (d).

7 **V. CLASS ACTION ALLEGATIONS**

8 52. As mentioned above, Plaintiff brings this action on behalf of herself and the Class
9 Members pursuant to section 382 of the Code of Civil Procedure.

10 53. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
11 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
12 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
13 The identity of such membership is readily ascertainable via inspection of Defendants’ employment
14 records.

15 54. **Common Questions of Law and Fact Predominate/Well Defined Community of**
16 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
17 non-exempt employees, which predominate over questions affecting only individual members
18 including, without limitation to:

19 A. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class
20 Members for all hours worked, including all minimum wages;

21 B. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class
22 Members for all required overtime wages at the Class Members’ regular rate of pay;

23 C. Whether Defendants’ rest period policies and practices afforded legally
24 compliant rest periods or compensation in lieu thereof;

25 D. Whether Defendants’ meal period policies and practices afforded legally
26 compliant meal periods or compensation in lieu thereof;

27 E. Whether Defendants maintained accurate employment records;

28 F. Whether Defendants timely paid all wages during employment;

1 G. Whether Defendants furnished legally-compliant wage statements to the Class
2 Members pursuant to Labor Code section 226; and

3 H. Whether Defendants' violations of the Labor Code and the Applicable Wage
4 Order amounted to a violation of California's UCL.

5 **55. Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual Class Members. The common questions of law
7 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
8 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
9 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
10 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
11 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
12 the common questions predominate over individual questions concerning each individual class
13 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

14 **56. Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
15 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
16 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
17 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
18 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
19 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
20 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
21 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
22 all wages in full and on time, and was subject to other similar policies and practices to which the Class
23 Members were subject.

24 **57. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
25 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
26 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
27 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
28 and are committed to vigorously prosecuting this action on behalf of the Class Members.

1 58. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
2 important public interest in establishing minimum working conditions and standards in California.
3 These laws and labor standards protect the average working employee from exploitation by employers
4 who have the responsibility to follow the laws and who may seek to take advantage of superior
5 economic and bargaining power in setting onerous terms and conditions of employment. The nature
6 of this action and the format of laws available to Plaintiff and the Class Members make the class action
7 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If
8 each employee were required to file an individual lawsuit, Defendants would necessarily gain an
9 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
10 each individual plaintiff with their vastly superior financial and legal resources.

11 59. Moreover, requiring each Class Member to pursue an individual remedy would also
12 discourage the assertion of lawful claims by employees who would be disinclined to file an action
13 against their former or current employer for real and justifiable fear of retaliation and permanent
14 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
15 the individual Class Members, even if possible, would create a substantial risk of inconsistent or
16 varying verdicts or adjudications with respect to the individual Class Members against Defendants
17 herein, and which would establish potentially incompatible standards of conduct for Defendants or
18 legal determinations with respect to individual Class Members which would, as a practical matter, be
19 dispositive of the interest of the other Class Members not parties to adjudications or which would
20 substantially impair or impede the ability of the Class Members to protect their interests.

21 60. Further, the claims of the individual Class Members are not sufficiently large to warrant
22 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
23 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
24 Civil Procedure.

25 **VI. COLLECTIVE ACTION ALLEGATIONS**

26 61. Plaintiff brings the Eighth Cause of Action for violations of the Fair Labor Standards
27 Act (hereinafter “FLSA”) as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §
28 216(b), on behalf of all sales employees of Defendants (the “Collective Action Plaintiffs”).

1 62. The Eighth Cause of Action for violations of the FLSA is brought as an “opt-in”
2 collective action pursuant to U.S.C. § 216(b).

3 63. A collective action is a superior method for bringing this action in that there is a well-
4 defined community of interest in the questions of law and fact. Questions of and fact common to the
5 collective action include, but are not limited to:

6 A. Whether Defendants failed and continues to fail to pay overtime in violation of
7 the FLSA;

8 B. Whether Defendants failure to pay overtime was willful under the FLSA;

9 C. Whether Defendants are subject to the provisions of the FLSA.

10 64. Plaintiff and the Collective Action Plaintiffs are similarly situated, have substantially
11 similar job duties, have substantially similar pay provisions, and are all subject to Defendants’ refusal
12 to pay overtime in violation of the FLSA. The claims of Plaintiff are typical of those of the class and
13 Plaintiff will fairly and typically represent the interests of the class.

14
15 **VII. EXHAUSTION OF REMEDIES**

16 65. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
17 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online
18 with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to
19 Defendants setting forth the facts and theories of the violations alleged against Defendants, as
20 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

21 66. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
22 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
23 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
24 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
25 action pursuant to Labor Code section 2699.

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1 **VIII. CAUSES OF ACTION**

2 **First Cause of Action**

3 *Failure to Pay All Overtime Wages*

4 *(Against All Defendants)*

5 67. Plaintiff realleges and incorporates by reference all previous paragraphs.

6 68. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
7 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
8 worked and provide a private right of action for the failure to pay all overtime compensation for
9 overtime work performed. At all times relevant herein, Defendants were required to properly pay
10 Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section
11 1194 and the Applicable Wage Order. Defendants caused Plaintiff and the other Class Members to
12 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
13 for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other
14 Class Members to work double-time hours but did not compensate them at twice their regular rate of
15 pay for such hours in accordance with California law.

16 69. Defendants failed to fully conform their pay practices to the requirements of California
17 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
18 policies and practices of failing to accurately record all the time that non-exempt employees were under
19 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
20 Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime
21 premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit
22 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
23 Civil Procedure section 1021.5.

24 **Second Cause of Action**

25 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

26 *(Against All Defendants)*

27 70. Plaintiff realleges and incorporates by reference all previous paragraphs.

28

1 **Fourth Cause of Action**

2 *Failure to Maintain Accurate Employment Records*

3 *(Against All Defendants)*

4 77. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 78. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep
6 at a central location in the state or at the plants or establishments at which employees are employed,
7 payroll records showing the hours worked daily by and wages paid to employees employed at the
8 respective plants or establishments. These records must be kept in accordance with rules established
9 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

10 79. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
11 maintain accurate and complete records.

12 80. Defendant has intentionally and willfully failed to keep accurate and complete records
13 showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus,
14 Plaintiff and the other Class Members have been denied their legal right and protected interest in having
15 available at a central location at the plant or establishment where they are employed, accurate and
16 complete payroll records showing the hours worked daily by, and the wages paid to, employees at those
17 respective locations pursuant to Labor Code 1174.

18 **Fifth Cause of Action**

19 *Failure to Pay Wages Timely during Employment*

20 *(Against All Defendants)*

21 81. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 82. Labor Code section 200 provides that "wages" include all amounts for labor performed
23 by employees of every description, whether the amount is fixed or ascertained by the standard of time,
24 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all
25 wages earned by any person in any employment are payable twice during the calendar month and must
26 be paid not more than seven days following the close of the period when the wages were earned. Labor
27 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
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1 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each
2 subsequent violation, plus 25% of the amount unlawfully withheld.

3 83. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
4 to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to
5 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
6 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

7 84. Defendants as a matter of established company policy and procedure in the State of
8 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
9 work without full compensation, to work without legally-compliant off-duty meal periods, to work
10 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
11 Class Members within seven days of the close of payroll, as required by law.

12 85. Defendants, as a matter of established company policy and procedure in the State of
13 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
14 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
15 and/or defraud Plaintiff and the other Class Members.

16 86. Defendants' pattern, practice, and uniform administration of its corporate policy of
17 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
18 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
19 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
20 owed to them pursuant to Labor Code sections 210 and 218.5.

21 **Sixth Cause of Action**

22 *Failure to Furnish Accurate Itemized Wage Statements*

23 *(Against All Defendants)*

24 87. Plaintiff realleges and incorporates by reference all previous paragraphs.

25 88. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
26 time of each payment to furnish an itemized wage statement in writing showing:

- 27 (1) The gross wages earned;
28 (2) The total hours worked by the employee;

- 1 (3) The number of piece-rate units earned and any applicable piece
- 2 rate if the employee is paid on a piece rate basis;
- 3 (4) All deductions, provided that all deductions made on written
- 4 orders of the employee may be aggregated and shown as one item;
- 5 (5) The net wages earned;
- 6 (6) The inclusive dates of the period for which the employee is paid;
- 7 (7) The name of the employee and only the last four digits of his or
- 8 her social security number or an employee identification number other
- 9 than a social security number;
- 10 (8) The name and address of the legal entity that is the employer; and
- 11 (9) All applicable hourly rates in effect during the pay period and the
- 12 corresponding number of hours worked at each hourly rate by the
- 13 employee.

14 89. As set forth above, Defendants issued and continues to issue wage statements to its non-
15 exempt employees including Plaintiff and the other Class Members that are inadequate under Labor
16 Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as
17 described above, Defendants failed to include required information on their wage statements, including,
18 but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
19 226, subdivision (a).

20 90. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
21 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

22 91. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
23 and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the
24 other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of
25 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class
26 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
27 reasonable attorneys' fees.

28

1 **Seventh Cause of Action**

2 *Violations of California's Unfair Competition Law*

3 *(Against All Defendants)*

4 92. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 93. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in California in violation of California Business and Professions Code section 17200 through
7 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
8 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
9 compensation to which they are legally entitled. These practices constitute unfair and unlawful
10 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
11 currently employing workers and attempting to do so in honest compliance with applicable wage and
12 hour laws.

13 94. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
14 Plaintiff for herself and on behalf of the Class Members, seeks full restitution of monies, as necessary
15 and according to proof, to restore any and all monies withheld, acquired and/or converted by
16 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

17 95. The acts complained of herein occurred within the four years prior to the initiation of
18 this action and are continuing into the present and ongoing.

19 96. Plaintiff was compelled to retain the services of counsel to file this Court action to
20 protect her interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
21 of Defendants' current non-exempt employees and to enforce important rights affecting the public
22 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
23 is entitled to recover under Code of Civil Procedure section 1021.5.

24
25 **Eighth Cause of Action**

26 *Violations of the FLSA*

27 *(Against All Defendants)*

28 97. Plaintiff refers to and incorporates by reference all previous paragraphs.

1 98. Plaintiff is informed and believes and hereon alleges that Defendants are subject to the
2 provisions of the Fair Labor Standards Act. Under 29 U.S.C. § 207(a) and § 216(b), Plaintiff and the
3 Collective Action Plaintiffs are entitled to overtime pay at a rate of one and one-half (1 ½) times the
4 regular rate of pay for hours worked in excess of forty (40) hours in a week and an equal additional
5 amount as liquidated damages, as well as costs and attorney's fees.

6 99. Plaintiff and the Collective Action Plaintiffs worked weeks in excess of forty (40) hours.

7 100. Plaintiff and the Collective Action Plaintiffs are entitled to the above overtime
8 premiums.

9 101. Defendants failed to compensate Plaintiff and the Collective Action Plaintiffs for any
10 overtime premiums.

11 102. This court has jurisdiction over this cause of action because the federal statute
12 specifically grants the employee the right to bring the action in "any Federal or State court of competent
13 jurisdiction." 29 U.S.C. § 216(b).

14 103. Plaintiff worked at least one week in which overtime premiums were not paid by
15 Defendants under the Fair Labor Standards Act within the two (2) years prior to initiating this lawsuit.

16 104. Plaintiff's individual employment is covered by the terms of the Fair Labor Standards
17 Act.

18 105. Defendants were the employer of Plaintiff and the Collective Action Plaintiffs, as the
19 term "employer" is defined in the Fair Labor Standards Act.

20 106. 45. Defendants are enterprises covered by the provisions of the Fair Labor Standards
21 Act, and have been for the last four years.

22 107. Defendants' violations of 29 U.S.C. § 207 were willful and intentional.

23 **Ninth Cause of Action**

24 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 142.3,*
25 *201, 202, 203, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1,*
26 *1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code*
27 *(Against All Defendants)*

28 108. Plaintiff realleges and incorporates by reference all previous paragraphs.

1 109. Based on the above allegations incorporated by reference, Defendants violated Labor
2 Code sections 142.3, 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197,
3 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; section 3364, subdivision
4 (b), of Title 8 of the California Code of Regulations; and the Applicable Wage Order (Cal. Code of
5 Regs., tit. 8, § 11140), and others that may be applicable.

6 110. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
7 2698 through 2699.6 because of Defendants' violation of Labor Code sections 142.3, 201, 202, 203,
8 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804,
9 and others that may be applicable; section 3364, subdivision (b), of Title 8 of the California Code of
10 Regulations; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11140), and others that may
11 be applicable.

12 111. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
13 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
14 of trial subject to the following formula:

- 15 A. \$100 for the initial violation per employee per pay period; and
16 B. \$200 for each subsequent violation per employee per pay period.

17 112. These penalties must be allocated seventy-five percent to the Labor and Workforce
18 Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties
19 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
20 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
21 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
22 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
23 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
24 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
25 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that "PAGA
26 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
27 different Labor Code violations."], internal quotation marks omitted).

28

1 113. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
2 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
3 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code
4 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at
5 pp. 780, 788.)

6 114. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
7 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
8 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
9 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
10 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
11 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
12 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
13 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
14 seeks default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226,
15 subdivision (e).

16 115. Labor Code section 210 provides that “in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the wages of each
18 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
20 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
21 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
22 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
23 penalties under Labor Code section 210 through PAGA.

24 116. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
25 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
26 intentionally committed for each underpaid employee for each pay period for which the employee is
27 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
28 offense for each underpaid employee for each pay period for which the employee is underpaid

1 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
2 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
3 to Labor Code section 1197.1.

4 117. Plaintiff was compelled to retain the services of counsel to file this action to protect his
5 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
6 by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled
7 to recover under Labor Code section 2699, subdivision (g)(1).

8
9 **IX. DEMAND FOR JURY TRIAL**

10 118. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
11 against Defendants.

12 **X. PRAAYER FOR RELIEF**

13 Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought
14 against Defendants, as follows:

- 15 1. For an order certifying the proposed class;
- 16 2. For an order appointing Plaintiff as representative of the class;
- 17 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 18 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
19 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
20 1197, and others as may be applicable;
- 21 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
23 1198, and others as may be applicable;
- 24 6. For the failure to provide rest periods and pay missed rest period premiums,
25 compensatory, consequential, general, and special damages according to proof pursuant
26 to Labor Code section 226.7;

- 1 **7.** For the failure to provide meal periods and pay missed meal period premiums,
2 compensatory, consequential, general, and special damages according to proof pursuant
3 to Labor Code sections 226.7 and 512;
- 4 **8.** For the failure to maintain accurate employment records, penalties pursuant to Labor
5 Code sections 226.3, 1174.5, and others that may be applicable;
- 6 **9.** For the failure to pay wages timely during employment, the unpaid balance of the
7 compensation owed to Plaintiff and the other Class Members and any applicable
8 penalties owed to them pursuant to Labor Code section 210;
- 9 **10.** For the violations of California's Unfair Competition Law, restitution to Plaintiff and
10 the other Class Members of all money and/or property unlawfully acquired by
11 Defendants by means of any acts or practices declared by this Court to be in violation
12 of Business and Professions Code sections 17200 through 17210;
- 13 **11.** For the claim of penalties pursuant to PAGA and other provisions of the California
14 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
15 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
16 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
17 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
18 available under Labor Code section 210;
- 19 **12.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
20 and Civil Code sections 3287 and 3289;
- 21 **13.** On all causes of action for which attorneys' fees may be available, for attorneys' fees
22 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
23 section 1021.5, and others as may be applicable;
- 24 **14.** For an order enjoining Defendants, and each of them, and their agents, servants, and
25 employees, and all persons acting under, in concert with, or for them, from acting in
26 derogation of any rights or duties adumbrated in this complaint;
- 27 **15.** For an order certifying the proposed collective action;
- 28 **16.** For overtime pay and liquidated damages pursuant to the FLSA; and

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17. For such other and further relief, this Court may deem just and proper.

Dated: April 13, 2022

MELMED LAW GROUP P.C.



MEGAN E. ROSS
Attorney for Plaintiff and the Putative Class