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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF NEVADA**
11

12 CHER LEE FAACKS, individually and on
behalf of all similarly situated individuals.

13 Plaintiff,

14 v.

15 STORAGEPRO MANAGEMENT, INC., a
16 California corporation, and DOES 1 through
17 10, inclusive,

18 Defendants.
19

CASE NO: CU19-084121

*Assigned to the Hon. S. Robert Tic-Raskin, Dept.
6*

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
DANIEL F. GAINES IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE SECOND AMENDED
COMPLAINT**

DATE: June 16, 2023

TIME: 10:00 a.m.

DEPT.: 6

*Complaint Filed: September 13, 2019
FAC Filed: November 5, 2019*

ELECTRONICALLY
FILED
BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA
06/06/2023
KIMBERLY FLENER, CLERK OF THE COURT
MELISSA MORGAN, DEPUTY

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Cher Lee Faacks (“Faacks” or
4 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 2. On May 11, 2023, the Court issued its Ruling regarding Plaintiff’s Unopposed
7 Motion for Preliminary Approval of Class Action Settlement and Seeking Leave to File Second
8 Amended Complaint. A true and correct copy of the Ruling is attached hereto as **Exhibit A**.

9 3. The Parties jointly prepared the First Amended Settlement Agreement and Release
10 of Claims (the “Amended Settlement” or “Amended Settlement Agreement”). A true and correct
11 copy of the Amended Settlement is attached hereto as **Exhibit B**. A true and correct copy of the
12 redlined changes made between the original Settlement Agreement and the Amended Settlement is
13 attached hereto as **Exhibit C**.

14 4. The Parties jointly prepared the Amended Notice of Pendency of Proposed Class
15 Action Settlement and Final Hearing (“Amended Class Notice”). A true and correct copy of the
16 Amended Class Notice is attached to **Exhibit B** as Exhibit 1. A true and correct copy of the
17 Redlined Amended Class Notice is attached to **Exhibit C** as Exhibit 1.

18 5. In advance of mediation, my office engaged in targeted formal discovery (including
19 Special Interrogatories, Form Interrogatories, and Requests for Production of Documents) and
20 informal discovery and obtained and reviewed multiple documents, including (i) Plaintiff’s
21 employee file and wage statements, (ii) policy documents relating to the employment of Plaintiff
22 and Class Members, and (iii) data relating to the alleged Labor Code violations and the value of the
23 recoverable damages and penalties, including time and payroll data. Defendant’s Counsel provided
24 my office with an approximate 17% sampling of time and payroll data among all Class Members
25 during the Class Period.

26 6. My office took the data sampling and had Bennett Berger, of Berger Consulting
27 Group, perform a detailed analysis of Plaintiff’s claims. Plaintiff’s expert found a minimal meal
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1 period violation rate (only 1.3%) based on this data, and Defendant's Counsel provided my office
2 with Defendant's legally compliant written meal period policies.

3 7. Plaintiff's strongest claim was her rest period claim. Defendant maintained a policy
4 and practice requiring employees to remain on its premises during rest periods, which Plaintiff
5 contends violates our Supreme Court's mandate in *Augustus v. ABM Security Services, Inc.* (2016)
6 5 Cal. 5th 257. Plaintiff alleges that Defendant's violation rate is theoretically 100%, affecting more
7 than 217,932 shifts during the Class Period and exposing Defendant to up to \$4,832,057 in
8 theoretical damages. However, in my experience, claims for rest periods are very difficult to
9 ascertain and certify. Risks as to class certification and difficulties of proof easily justify the
10 compromised settlement amount here because it represents a fair middle ground in light of the
11 litigation risks that lied ahead.

12 8. I have worked with Phoenix Settlement Administrators on more than twenty class
13 and PAGA settlements. Their work is excellent.

14 9. My office, on behalf of Plaintiff, submitted the Amended Settlement Agreement,
15 together with the supplemental documents, to the LWDA via online upload on May 25, 2023,
16 concurrently with the filing of the supplemental preliminary approval documents.

17 I declare, under penalty of perjury, under the laws of the State of California, that the
18 foregoing is true and correct. Executed on June 6, 2023 at Westlake Village, California

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21 _____
22 DANIEL F. GAINES
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EXHIBIT A

CU19-084121

Cher Lee Faacks v. Storage Pro, Inc.

The matter is before the Court on Plaintiff's motion for preliminary approval of class action settlement. The hearing is continued on the Court's own motion to June 16, 2023, at 10:00 a.m., in Department 6. The Court requires supplemental and/or amended filings to address the four (4) issues noted below.

(1) Plaintiff has not provided sufficient details as to settlement negotiations. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Counsel should include additional information regarding the specific documents reviewed and the extent of discovery conducted prior to agreeing to settle the case.

(2) Plaintiff has not submitted a declaration from the proposed class representative evidencing that she has agreed to act as the same and understands her responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999.) The declaration or other pleadings should also address why the proposed class representative payment is reasonable, including addressing what, if anything, the representative did beyond the expected services of any class representative. (See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.)

(3) Plaintiffs have not submitted a declaration from the proposed class administrator, Phoenix Settlement Administrators ("Phoenix"), or a copy of its bid for administering this matter. They have also not included a description of Phoenix's services, experience, procedures, and/or proof that it has adequate insurance. Further, there is no statement as whether Phoenix is affiliated with any counsel in this matter.

(4) The pleadings, including the settlement agreement, proposed notice, and declarations, do not address how notice of final judgment will be given to the class. (See *Rules of Court*, Rule 3.771(b).) The settlement agreement also does not appear to explain how notice of any change of the date or location of the "fairness hearing" will be given to Class Members.

Plaintiff shall timely correct the above-noted issues before the continued hearing date. No appearances are required.

EXHIBIT B

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12 Facsimile: (415) 394-9401

13 Attorneys for Defendant StoragePro Management Inc.,
erroneously sued as Storagepro, Inc.
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF NEVADA**

17
18 CHER LEE FAACKS, individually and on
behalf of all similarly situated individuals.

19 Plaintiff,

20 v.

21 STORAGEPRO MANAGEMENT, INC., a
California corporation, and DOES 1 through
22 10, inclusive,

23 Defendants.
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26
27
28

CASE NO: CU19-084121

CLASS ACTION

**FIRST AMENDED SETTLEMENT
AGREEMENT AND RELEASE OF CLAIMS**

Complaint Filed: September 13, 2019

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This First Amended Settlement Agreement and Release of Claims (“Settlement
3 Agreement”) is made and entered into by and between Plaintiff Cher Lee Faacks (“Faacks” or
4 “Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated,
5 and Defendant StoragePro Management, Inc. (“Defendant”), subject to the terms and conditions
6 herein and the Court’s approval.

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as “the Parties.”

10 2. Daniel F. Gaines, Alex P. Katofsky and Evan S. Gaines of Gaines & Gaines, APLC
11 are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines &
12 Gaines, APLC shall be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *Cher Lee Faacks, Plaintiff, v. StoragePro*
14 *Management, Inc., a California corporation, and Does 1 Through 10, Inclusive, Defendants,*” Case
15 No. 2CU19-084121, pending before the Superior Court of the State of California for the County of
16 Nevada.

17 4. The “Settlement Class” shall be defined as “all non-exempt employees employed
18 by Defendant in California at any time between September 13, 2015 and October 15, 2022” (the
19 “Class Period”). Defendant represents that this Class contains no more than 725 members who
20 worked no more than 50,000 workweeks during the Class Period.

21 5. Members of the Settlement Class shall collectively be referred to as a “Class
22 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
23 detailed below, will be excluded from the final Settlement Class.

24 **B. General.**

25 1. On or about September 13, 2019, Plaintiff initiated the Action by filing a class action
26 complaint, on behalf of herself and all other putative class members. Plaintiff filed a First Amended
27 Complaint on or about November 5, 2019 which alleged representative claims for civil penalties
28 pursuant to PAGA and class claims for equitable relief pursuant to Business & Professions Code

1 section 17200, premised on underlying violations of Labor Code sections 201-202, 226(a), 226.3,
2 226.7, 510, 512, 1194, and 2802. Plaintiff subsequently dismissed her PAGA claims without
3 prejudice.

4 2. Extensive law and motion practice ensued relating to the validity of an arbitration
5 agreement entered into between the Parties. The arbitration issue culminated with the Court of
6 Appeal of the State of California, Third Appellate District, issuing a decision in case number
7 C092404 which upheld the trial court's ruling that Plaintiff was not required to arbitrate her unfair
8 competition claims.

9 3. On August 16, 2022, following their exchange of information regarding the
10 Settlement Class and the claims and defenses asserted by the Parties, counsel for the Parties
11 engaged in arm's-length negotiations with the help of mediator Brandon McKelvey, Esq., to reach
12 the basic terms of this Settlement.

13 4. As part of the Court approval process for this class action settlement, Plaintiff shall
14 file the Second Amended Complaint, attached hereto as Exhibit 3, which asserts direct class action
15 claims against Defendant for (1) failure to pay all wages (Labor Code § 510 and 1194); (2) failure
16 to provide rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-
17 2001); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7,
18 and 512; IWC Wage Order 4-2001); (4) knowing and intentional failure to comply with itemized
19 employee wage statement provisions (Labor Code §§ 226(a), (e)); (5) failure to timely pay wages
20 due at separation of employment (Labor Code §§ 201-203); (6) failure to reimburse employee
21 business expenses (Labor Code § 2802); and (7) violation of Business and Professions Code §
22 17200 (the "Second Amended Complaint").

23 5. Defendant denies any liability or wrongdoing of any kind associated with the claims
24 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
25 purpose other than this settlement. Defendant contends that it has complied at all times with the
26 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
27 certification would be inappropriate because Plaintiff is not an adequate class representative,
28 Plaintiff's claims are not typical of putative class members, and individual issues predominate over

1 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
2 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
3 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
4 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
5 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
6 or evidence of the appropriateness of these or similar claims for class certification in the Action or
7 with respect to any other proceeding.

8 6. The Class Representative contends that Defendant violated the California Labor
9 Code and that this case is appropriate for class certification.

10 7. Class Counsel represent that they have conducted a thorough investigation into the
11 facts and law during the prosecution of this class action case, including the exchange of extensive
12 informal discovery and the review and verification of statistical data and other facts and information
13 provided by Defendant. Counsel for the Parties also represent that they have investigated the
14 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
15 potential defenses thereto, and the damages claimed by Plaintiff.

16 8. Based on their own independent investigation and evaluation, Class Counsel are of
17 the opinion (and will so represent to the Court) that settlement for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
19 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
20 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
21 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
22 that this settlement is fair and in the best interest of the Settlement Class.

23 9. The Parties agree that the settlement class described herein may be certified for
24 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
25 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
26 approved, the certification will have no force or effect and will immediately be revoked. The
27 Parties further agree that certification for purposes of the settlement is in no way an admission that
28 class certification is proper under the more stringent standard applied for litigation and that

1 evidence of this limited stipulation for settlement purposes only will not be admissible for any
2 purpose in this or any other proceeding.

3 **C. Terms of Settlement.**

4 1. The financial terms of the settlement are as follows:

5 (a) **Gross Settlement Amount:** The Parties agree to settle this Action for
6 Defendant's payment of the Gross Settlement Amount of Four Hundred Forty-Nine Thousand Fifty
7 U.S. Dollars (\$449,050.00) ("the Gross Settlement Amount"). The Gross Settlement Amount
8 includes the attorneys' fees of Class Counsel, litigation costs and expenses (which includes, without
9 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in
10 documenting the settlement, providing any notices required as part of the settlement, securing Court
11 approval of the settlement, and obtaining judgment in the Action), the enhancement payment to the
12 Class Representative, as approved by the Court, and all costs of administration, including, without
13 limitation, settlement administration fees and expenses. Defendant shall pay all employer payroll
14 tax obligations due on wage payments made from the Net Settlement Sum in addition to, and
15 separate and apart from, the Gross Settlement Amount.

16 (b) **Net Settlement Sum:** "Net Settlement Sum" is defined as the Gross
17 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
18 documented litigation costs and expenses incurred or advanced by Class Counsel, the enhancement
19 payment to the Class Representative, and the costs of administering the settlement.

20 (c) **Calculation of the Individual Settlement Payments:** "Individual
21 Settlement Payments" means the portion of the Net Settlement Sum distributable to each Class
22 Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion
23 form). The Individual Settlement Payments will be calculated by dividing the Net Settlement Sum
24 by the total weeks worked by all participating Class Members in California in a non-exempt
25 position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall
26 be multiplied by the number of weeks each individual participating Class Member worked for
27 Defendant in California in a non-exempt position during the Class Period to yield their Individual
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1 Payment Amount. Each Participating Settlement Class Member who does not opt out will receive
2 an Individual Payment Amount.

3 i. For tax purposes, each Individual Payment Amount will be
4 apportioned (a) 20% to wages (reported on an IRS Form W-2 and subject to applicable
5 withholdings); (b) 25% to penalties (reported on an IRS Form 1099); (c) 25% to interest (reported
6 on an IRS Form 1099); and (d) 30% to expense reimbursement (not reported on any IRS form). All
7 Individual Settlement Payments paid to Class Members will be subject to any applicable wage
8 garnishments, liens, or other legally mandated treatment as required by law.

9 (d) **Enhancement Payment to Class Representative:** The amount awarded to
10 the Class Representative as an enhancement payment will be set by the Court in its discretion, not
11 to exceed \$15,000.00. This amount will be deducted from the Gross Settlement Amount. An IRS
12 Form 1099 will be issued to the Class Representative for her enhancement payment. Defendant
13 agrees not to dispute or otherwise object to the enhancement payment if Plaintiff requests \$15,000
14 or less,

15 (e) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
16 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
17 the settlement award that has been made available for the Settlement Class by the efforts of Class
18 Counsel. The amount awarded shall not exceed 40% of the Gross Settlement Amount (i.e.
19 \$179,620.00). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
20 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
21 requested by Class Counsel so long as the request does not exceed \$179,620.

22 (f) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
23 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
24 litigation costs and expenses, not to exceed \$20,000.00. An IRS Form 1099 will be issued to Class
25 Counsel with respect to its award of costs and expenses. Defendant agrees not to dispute or
26 otherwise object to the attorneys' cost award requested by Class Counsel so long as the request
27 does not exceed \$20,000.

1 (g) **Settlement Administration Costs:** The fees and other charges of the
2 Settlement Administrator to administer the Settlement are expected to total no more than \$12,000,
3 and will be paid from the Gross Settlement Amount. These fees shall include any costs associated
4 with the required tax reporting on any Individual Settlement Payments, and the issuing of any and
5 all W-2 and 1099 forms. Subject to approval of the Court, the Parties have agreed that Phoenix
6 Settlement Administrators will serve as a neutral third-party claims' administrator ("Settlement
7 Administrator") to perform all acts related to providing notice to the Settlement Class. Settlement
8 Administrator shall be responsible for (a) printing and distributing the Court-approved Notice of
9 Class Action Settlement ("Class Notice") to all Class Members; (b) administering the settlement;
10 (c) processing exclusions and objections; (d) resolving disputes; (e) distributing the Gross
11 Settlement Amount as directed by the Court and set forth herein; (f) tax reporting; (g) providing
12 necessary weekly status reports; and (h) other duties and responsibilities set forth herein.

13 (h) **No Warranty by Defendant:** Plaintiff understands and agrees that
14 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
15 makes no representations regarding tax obligations or consequences, if any, related to this
16 Settlement Agreement.

17 **D. Release of Claims.**

18 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
19 Settlement Amount and payroll taxes due hereunder, Plaintiff and all Settlement Class members
20 who do not timely opt-out will be deemed to have fully released and discharged Defendant, and
21 each of its present and former officers, directors, members, owners, managers, shareholders,
22 agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities,
23 consultants, attorneys, successors or assigns ("Released Parties") from any and all Released
24 Claims which arose during their employment in a non-exempt position in California during the
25 Class Period. "Released Claims" are all claims and allegations asserted in the Second Amended
26 Complaint, including all claims for unpaid wages, meal and rest period premiums/wages,
27 inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including
28

1 claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and
2 2802, the applicable Industrial Wage Commission Wage Order, and Business and Professions
3 Code section 17200 as they relate to the underlying Labor Code claims referenced above, which
4 arose during employment in a non-exempt position in California during the Class Period. No
5 PAGA claims are encompassed in this release, and no such claims shall be released by this
6 Settlement.

7 2. Each and every Settlement Class Member who has not submitted a timely and valid
8 opt-out request shall be permanently enjoined and forever barred from prosecuting any and all
9 Released Claims against the Released Parties.

10 **E. Notice and Exclusion Process.**

11 1. Within twenty (20) calendar days after entry of the order granting preliminary
12 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all
13 Class Members, including their last known addresses, telephone numbers, social security numbers,
14 and their dates of employment in a non-exempt position in California during the Class Period
15 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
16 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff’s Counsel. All
17 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
18 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
19 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
20 storage, custody, use, and/or dissemination of the confidential information. Such information must
21 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

22 2. A notice of pendency of class action, proposed settlement and hearing date for Court
23 approval (“Class Notice”) in the form attached hereto as Exhibit 1, and as approved by the Court,
24 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within thirty
25 (30) calendar days after entry of the order granting preliminary approval. Attached to the Class
26 Notice will be a request for exclusion form (“Request for Exclusion Form”) in the form attached
27 hereto as Exhibit 2.

1 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
2 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
3 presumed that if an envelope has not been returned within forty-five (45) days of the mailing that
4 the Class Member received the Class Notice. In the event of returned or non-deliverable notices,
5 the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
6 notices.

7 4. Each Class Member will be fully advised of the settlement, the ability to object to
8 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
9 inform the Class Members of the Court-established deadlines for filing objections and a Request
10 for Exclusion Form.

11 5. Each Class Notice will contain personalized information setting forth the number of
12 weeks each Class Member worked for Defendant in California in a non-exempt position during the
13 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
14 disputes any of the information listed on his or her Class Notice, the Class Member may produce
15 evidence to the Settlement Administrator showing such information the Class Member contends
16 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
17 however, and the Settlement Administrator's decision on these matters will be final. The Class
18 Notice will also set forth IRS W-9 information if required.

19 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
20 to receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
21 Date occurs.

22 7. In order to elect not to participate in the Settlement, a Class Member must submit a
23 Request for Exclusion Form and mail it to the Settlement Administrator no later than forty-five (45)
24 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
25 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
26 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
27 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
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1 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
2 on which the U.S. Postal Service is open.

3 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
4 for those Class Members whose Class Notice and Exclusion Form are returned as “undeliverable.”
5 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
6 on which the U.S. Postal Service is open.

7 9. The Settlement Administrator will search for additional addresses on returned mail
8 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
9 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
10 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
11 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
12 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
13 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
14 Settlement Administrator will search using the social security number for a more current address.
15 If no address is found within 10 days, no further action is required.

16 10. The Settlement Administrator will notify the Parties of the total number of valid
17 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
18 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
19 and Request for Exclusion Forms to Class Members).

20 11. In order to object to the settlement, a Class Member must mail his or her objection
21 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
22 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
23 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
24 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
25 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
26 extended for any reason.

27 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
28 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration

1 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
2 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
3 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
4 listing the amount of all payments to be made to each Class Member without names or personal
5 identifying information.

6 13. Defendant shall deposit the Gross Settlement Amount, plus all payroll taxes due
7 hereunder, with the Settlement Administrator no later than ten (10) calendar days after the Effective
8 Date. The effective date of this Settlement Agreement (“Effective Date”) is the date the Court signs
9 an order granting final approval of the settlement and entering judgment thereon. If objections to
10 the settlement are filed and not withdrawn, the Effective Date of the settlement is the sixty-fifth
11 (65th) day after notice of the final approval order is mailed, unless an appeal is filed, in which case
12 the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals, or (b) all
13 appeals are dismissed.

14 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
15 ten (10) calendar days after its receipt thereof. Class Members must cash each of their Individual
16 Payment Amount checks within one hundred eighty (180) calendar days after they are mailed by
17 the Settlement Administrator. The value of any checks uncashed more than one hundred eighty
18 (180) days after mailing shall be paid to the State of California State Controller’s Office, to be held
19 in the name of the respective Class Member.

20 15. The Settlement Administrator will establish and maintain and use an internet
21 website to post information of interest to Class Members including the date, time, and location of
22 the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary
23 Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the
24 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class
25 Representative Service Payment, the Final Approval Order and the Judgment. These documents
26 will remain online for no fewer than one year after the entry of the Judgment.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

- 5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
7 (b) approving as to form and content the proposed Class Notice;
8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;
10 (d) preliminarily certifying the Settlement Class for purposes of settlement;
11 (e) preliminarily setting attorneys' fees and costs payable to Class Counsel;
12 (f) preliminarily setting the enhancement payment to the Class Representative;
13 (g) preliminarily approving Phoenix Settlement Administrators as the
14 Settlement Administrator and its estimated fees and costs of \$12,000; and
15 (h) Permitting Plaintiff to file the Second Amended Complaint.

16 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

17 1. In connection with the hearing on final approval of the settlement provided for in
18 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
19 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
20 by the Court):

- 21 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
22 and adequate, and directing consummation of its terms and provisions;
23 (b) approving Class Counsel's application for an award of attorneys' fees and
24 reimbursement of documented litigation costs and expenses, the enhancement payment to the
25 Class Representative, and the costs of administering the settlement; and
26 (c) Entering judgment in this Action in accordance with this Stipulation,
27 pursuant to Cal. Rules of Court, Rule 3.769(h).
28

1 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
2 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
3 on final approval (unless otherwise ordered by the Court).

4 **H. Miscellaneous Provisions:**

5 1. **Voiding the Agreement.**

6 A failure of the Court to approve any material condition of this Settlement Agreement which
7 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
8 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
9 and unenforceable as to all Parties herein at the option of any Party.

10 2. **Parties' Authority.**

11 The signatories hereto represent that they are fully authorized to enter into this Settlement
12 Agreement and bind the Parties hereto to the terms and conditions hereof.

13 3. **Mutual Full Cooperation.**

14 The Parties agree to fully cooperate with each other to accomplish the terms of this
15 Stipulation of Settlement, including but not limited to, execution of such documents and such other
16 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
17 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
18 by this Settlement Agreement and any other efforts that may become necessary by order of the
19 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
20 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
21 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
22 Court's preliminary and final approval of the settlement.

23 4. **No Prior Assignments.**

24 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
25 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
26 entity any portion of any liability, claim, demand, action, cause of action or rights released and
27 discharged by this Stipulation of Settlement.

28 ///

1 **5. No Admission.**

2 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
3 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
4 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
5 Settlement Agreement with the intention of avoiding further disputes and litigation with the
6 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
7 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
8 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
9 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

10 **6. Notices.**

11 Unless otherwise specifically provided herein, all notices, demands or other
12 communications given hereunder shall be in writing and shall be deemed to have been duly given
13 as of the third business day after mailing by United States registered or certified mail, return receipt
14 requested, addressed:

15 **To Plaintiff and the Settlement Class:**

16 Daniel F. Gaines, Esq.
17 Alex P. Katofsky, Esq.
18 Evan S. Gaines, Esq.
19 GAINES & GAINES, APLC
20 4550 E. Thousand Oaks Blvd., Suite 100
21 Westlake Village, CA 91362

22 **To Defendant:**

23 Gabriel N. Rubin, Esq.
24 Julie Y. Zong, Esq.
25 JACKSON LEWIS P.C.
26 50 California Street, 9th Floor
27 San Francisco, CA 94111-4615

28 **7. Construction.**

 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
Agreement shall not be construed in favor of or against any Party by reason of the extent to which
any Party or his or its counsel participated in the drafting of this Settlement Agreement.

1 **8. Captions and Interpretations.**

2 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
3 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
4 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
5 recital.

6 **9. Modification.**

7 This Settlement Agreement may not be changed, altered, or modified, except in writing and
8 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
9 discharged except by performance in accordance with its terms or by a writing signed by each of
10 the Parties hereto on their attorneys.

11 **10. Integration Clause.**

12 This Settlement Agreement contains the entire agreement between the Parties relating to
13 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
14 understandings, representations, and statements, whether oral or written and whether by a Party or
15 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
16 writing.

17 **11. Binding on Assigns.**

18 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
19 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

20 **12. Governing Law.**

21 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
22 according to the laws of the State of California, without giving effect to any conflict of law
23 principles or choice of law principles.

24 **13. Signatures of All Class Members Unnecessary to be Binding.**

25 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
26 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,
27 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
28

1 provided herein and such shall have the same force and effect as if this Settlement Agreement was
2 executed by each Class Member.

3 **14. Counterparts.**

4 This Settlement Agreement may be executed in counterparts, and when each Party has
5 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
6 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
7 Agreement, which shall be binding upon and effective as to all Parties.

8 **15. Confidentiality**

9 Until Plaintiff files her motion for preliminary approval of the class action settlement, the
10 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
11 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
12 agencies, or as otherwise required by law.

13 **16. No Publicity.**

14 Plaintiff and her Counsel will not contact the media about the settlement or respond to any
15 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
16 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post any
17 information about the settlement on social media or their firms' websites.

18 **17. Escalator Provision re: Representation Regarding Class Size.**

19 Defendant has represented to Plaintiff and her counsel that the Settlement Class includes no
20 more than 725 individuals who worked no more than 50,000 workweeks during the Class Period.
21 Should the final total of Class Members exceed 725 and/or the final total of workweeks exceed
22 50,000 by five (5) percent or more, then Plaintiff may terminate this Agreement unless Defendant
23 agrees to increase the Gross Settlement Amount on a pro rata basis based on the proportionate
24 increase (with the larger percentage increase controlling).

25 **18. Election to Vacate the Settlement**

26 If more than ten percent (10%) of the Class Members collectively timely request exclusion,
27 Defendant shall have the option, in its sole discretion, and notwithstanding any other provisions of
28

1 this Agreement, to withdraw from the Agreement in its entirety, whereupon the Agreement shall
2 be null and void for any and all purposes. If Defendant elects to exercise its rights under this
3 provision, it will so notify Class Counsel and the Court in writing no later than ten (10) business
4 days after receiving written notice via overnight delivery from the Settlement Administrator of the
5 number of opt-outs.

6 Dated: June ^{06 / 05 / 2023} ~~_____~~, 2023

By: Cheryl Lee Faacks
CHER LEE FAACKS
Plaintiff and Class Representative

9 Dated: June 5, 2023

10 STORAGE PRO MANAGEMENT, INC.
By: Stephen Mirabito
11 Its: Stephen Mirabito, President

13 **APPROVED AS TO FORM AND CONTENT:**

14 Dated: June 5, 2023

GAINES & GAINES, APLC
By: Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
18 Representative

19 Dated: June 5, 2023

JACKSON LEWIS P.C.
By: Gabriel N. Rubin, Esq.
Julie Y. Zong, Esq.
Counsel for Defendant

EXHIBIT 1

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

CHER LEE FAACKS, individually and on
behalf of all similarly situated individuals.

Plaintiff,

v.

STORAGEPRO MANAGEMENT, INC. , a
California corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CU19-084121

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

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$449,050 to pay claims to all current and former non-exempt California employees of Defendant StoragePro Management, Inc. (“Defendant”) employed from September 13, 2015 through October 15, 2022.
- The settlement resolves a lawsuit over whether Defendant failed to pay all wages; provide meal and rest periods or compensation in lieu thereof; timely issued wages upon separation of employment; issued accurate and complete wage statements; and failed to reimburse employee business expenses. It avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$179,620 as attorneys’ fees and \$20,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money (if any) could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Arm and J Corporation about the legal claims that were brought in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On September 13, 2019, Plaintiff Cher Lee Faacks filed this lawsuit in the Nevada County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code and Business & Professions Code. The Lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant employed from September 13, 2015 through October 15, 2022 ("Class Period"). The lawsuit alleges that members of the Class were not paid all wages; were not provided all meal and rest periods or compensation in lieu thereof; were not timely issued wages upon separation of employment; were not issued accurate and complete wage statements; and were not reimbursed for all business expenses they incurred. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
 Alex P. Katofsky, Esq.
 Evan S. Gaines, Esq.
 GAINES & GAINES, APLC
 4550 E. Thousand Oaks Boulevard, Suite 100
 Westlake Village, CA 91362
 Phone: (866) 550-0855

Defendant's Attorneys

Gabriel N. Rubin, Esq.
 Julie Y. Zong
 JACKSON LEWIS P.C.
 50 California Street, 9th Floor
 San Francisco, CA 94111-4615

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt California employees of Defendant employed from September 13, 2015 through October 15, 2022.

C. What does the Settlement provide?

1. Gross Settlement Amount.

Defendant will pay \$449,050 (the "Gross Settlement Amount") to settle the lawsuit. The following sums will be paid from the Gross Settlement Amount: (1) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$179,620 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$20,000; (2) an enhancement payment to the Class Representative set by the court, not to exceed \$15,000, for her service in the Action; and (3) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$12,000. The amount of the Gross Settlement Amount remaining after these payments is the "Net Settlement Sum."

2. Individual Settlement Payments.

Your share of the Net Settlement Sum will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and payroll taxes due hereunder, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assigns ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

"Released Claims" are all claims and allegations asserted in the Second Amended Complaint, including all claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and 2802, the applicable Industrial Wage Commission Wage Order, and Business and Professions Code section 17200 as they relate to the underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period. No PAGA claims are encompassed in this release, and no such claims shall be released by this Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an “Individual Settlement Payment,” which is a portion of the Net Settlement Sum distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Settlement Payment will be calculated by dividing the Net Settlement Sum by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Settlement Payment. Each Participating Settlement Class Member who does not opt out will receive an Individual Settlement Payment.

For tax purposes, each Individual Settlement Payment will be allocated (a) 20% to wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 25% to penalties (reported on an IRS Form 1099); (c) 25% to interest (reported on an IRS Form 1099); and (d) 30% to expense reimbursement (not reported on any IRS form).

All Individual Settlement Payment paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [_____] weeks while employed in a non-exempt position in California from September 13, 2015 through October 15, 2022. Based on these weeks worked, you are entitled to an Individual Settlement Payment of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [_____] . In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on _____, at _____ a.m., in Courtroom 6 of the Nevada County Superior Court, located at 201 Church Street, Nevada City, California 95959. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

It’s possible the Court will reschedule the Final Approval Hearing. You should check the Administrator’s website [[www.etc.](#)] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [REDACTED]. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than [REDACTED].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [REDACTED].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Settlement Agreement and Release of Claims.” The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Administrator’s website at [URL of website]. The relevant Settlement documents will remain on the Administrator’s website for no fewer than one year after the entry of Judgment. You can also examine the pleadings and other records in the Lawsuit at any time during regular business hours at the Office of the Clerk of the Nevada County Superior Court, located at 201 Church Street, Nevada City, CA 95959.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number]. Reference the StoragePro Management Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Cher Lee Faacks, Plaintiff, v. StoragePro Management, Inc., a California corporation, and Does 1 Through 10, Inclusive, Defendants, Nevada County Superior Court, Case No. CU19-084121*. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant StoragePro Management, Inc. as a non-exempt employee in California during the period from September 13, 2015 through October 15, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

Last four digits of Social Security Number: XXX-XX-_____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE [45 days after mailing of Notice]. Send this signed request for exclusion form to the Settlement Administrator:

StoragePro Management Settlement Administrator
c/o Phoenix Settlement Administrators

EXHIBIT 3

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFSKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Cher Lee Faacks, individually and on behalf of all similarly situated
8 individuals

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF NEVADA**

11 CHER LEE FAACKS, individually and on
12 behalf of all similarly situated individuals.

13 Plaintiff,

14 v.

15 STORAGEPRO MANAGEMENT, INC., a
16 California corporation, and DOES 1 through
10, inclusive,

17 Defendants.

CASE NO: CU19-084121

*Assigned to the Hon. Thomas M. Anderson,
Dept. 6*

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 510 AND 1194)**
2. **FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 4-2001)**
3. **FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, AND
512; IWC WAGE ORDER 4-2001)**
4. **FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802)**
5. **KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**
6. **FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

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

DEMAND FOR JURY TRIAL

Complaint Filed: September 3, 2019
FAC Filed: November 5, 2019

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1 Plaintiff CHER LEE FAACKS (“Plaintiff”), individually and on behalf of all similarly
2 situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, complains
3 of STORAGEPRO MANAGEMENT, INC., a California corporation, and/or any subsidiaries or
4 affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as
5 follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff
9 and the Class of individuals described in detail below against Defendants.

10 2. From September 13, 2015 to the present (the “liability period”), Defendants have had
11 a consistent policy of failing to pay all wages due to Class Members (as defined below); provide
12 legally compliant meal and rest periods or compensation in lieu thereof to Class Members; reimburse
13 Class Members for business expenses; comply with itemized employee wage statement provisions;
14 and issue Plaintiff and Class Members all wages due and owing upon separation of employment.

15 3. Plaintiff, on behalf of herself and members of the Class, brings this action pursuant to
16 Labor Code §§ 201-203, 226.7, 510, 512, 1194, and 2802 seeking compensation for all unpaid wages,
17 meal and rest period premium wages, business-related expenses, statutory penalties, injunctive and
18 other equitable relief, and reasonable attorneys’ fees and costs.

19 4. Plaintiff, on behalf of herself and members of the Class and pursuant to Business &
20 Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all
21 benefits Defendants enjoyed from their failure to pay all wages and reimburse all business expenses
22 to Class Members.

23 5. Venue as to each Defendant is proper in Nevada County, California as Plaintiff and
24 other Class Members worked for Defendants in Nevada County, California.

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II.

PARTIES

A. Plaintiff

6. Plaintiff CHER LEE FAACKS was employed by Defendants from August 2018 through September 2018 as a non-exempt employee in Nevada County, California.

7. During her work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages due;
- b. Willfully denied meal and rest breaks or compensation in lieu thereof;
- c. Willfully denied the reimbursement of business expenses incurred;
- d. Willfully denied complete and accurate wage statements; and
- e. Willfully denied the timely payment of all wages upon separation of her employment.

B. Defendants

8. Defendant STORAGEPRO MANAGEMENT, INC. is a California corporation that operates in California. STORAGEPRO MANAGEMENT, INC. employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Nevada County in the State of California.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

1 11. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
2 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
3 provisions of the California Labor Code as alleged herein.

4 **III.**

5 **CLASS ACTION ALLEGATIONS**

6 12. Plaintiff brings this action on behalf of herself and all others similarly situated as a
7 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
8 following Class composed of and defined as follows:

9 **THE CLASS**

10 All non-exempt employees employed by Defendants in California at
11 any time between September 13, 2015 and October 15, 2022.

12 13. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
13 modify this class description with greater specificity or further division into subclasses or limitation
14 to particular issues.

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

18 **A. Numerosity**

19 15. The potential members of the Class as defined are so numerous that joinder of all the
20 members the Class is impracticable. While the precise number of members of the Class has not been
21 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 currently employ, and during the relevant time periods employed, over 50 persons in the State of
23 California who fall within the Class definition.

24 16. Accounting for employee turnover during the relevant period necessarily increases this
25 number. Plaintiff alleges Defendants' employment records would provide information as to the
26 number and location of members of the Class. Joinder of members of the Class is not practicable.

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1 **B. Commonality**

2 17. There are questions of law and fact common to the Class that predominate over any
3 questions affecting only individual class members. These common questions of law and fact include,
4 without limitation:

- 5 a. Whether Defendants failed to compensate Plaintiff and Class Members for all
6 wages due, in violation of Labor Code §§ 510 and 1194;
- 7 b. Whether Defendants failed to properly provide rest periods or compensation in
8 lieu thereof to Plaintiff and Class members, in violation of Labor Code § 226.7,
9 and IWC Wage Order 4-2001;
- 10 c. Whether Defendants failed to properly provide meal periods or compensation
11 in lieu thereof to Plaintiff and Class members, in violation of Labor Code §§
12 226.7 and 512, and IWC Wage Order 4-2001;
- 13 d. Whether Defendants failed to reimburse Plaintiff and Class Members with all
14 business-related expenses incurred in the discharge of their duties, in violation
15 of Labor Code § 2802;
- 16 e. Whether Defendants failed to issue complete and accurate wage statements to
17 Plaintiff and Class Members, in violation of Labor Code § 226(a), (e);
- 18 f. Whether Defendants failed to timely pay Plaintiff and Class Members all
19 wages due and owing at the separation of their employment, in violation of
20 Labor Code §§ 201-203; and
- 21 g. Whether Plaintiff and Class members are entitled to equitable relief pursuant
22 to Business & Professions Code § 17200 *et seq.*

23 **C. Typicality**

24 18. The claims of the named Plaintiff are typical of the claims of members of the Class.
25 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
26 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
27 of law, and statutes as alleged herein.

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1 **D. Adequacy of Representation**

2 19. Plaintiff will fairly and adequately represent and protect the interests of members of
3 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
4 employment class actions.

5 **E. Superiority of Class Action**

6 20. A class action is superior to other available means for the fair and efficient adjudication
7 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
8 questions of law and fact common to the proposed Class predominate over any questions affecting
9 only individual members of the proposed Class. Each member of the proposed Class has been
10 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

11 21. Class action treatment will allow those similarly situated persons to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
14 action that would preclude its maintenance as a class action.

15 **IV.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

19 **FAILURE TO PAY ALL WAGES DUE**

20 **(LABOR CODE §§ 510 AND 1194)**

21 22. Plaintiff incorporates paragraphs 1 through 21 of this Complaint as fully set forth
22 herein.

23 23. During the liability period, Defendants have failed to pay Plaintiff and Class Members
24 for all hours worked and all wages due, in violation of Labor Code §§ 510 and 1194. Defendant failed
25 to pay Plaintiff and Class Members all minimum wages and overtime wages earned during the course
26 of their employment. Plaintiff and Class Members were not paid for all hours worked and are owed
27 minimum wages and overtime wages as a result.

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1 24. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum
2 and overtime wages, Plaintiff and members of the Class have been deprived of wages in amounts to
3 be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest
4 thereon, attorneys' fees, and costs pursuant to Labor Code § 1194.

5 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

6 **V.**

7 **SECOND CAUSE OF ACTION**

8 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

9 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

10 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

11 25. Plaintiff incorporates paragraphs 1 through 24 of this Complaint as fully set forth
12 herein.

13 26. Plaintiff and Class members are entitled to one hour of pay for each day that
14 Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and
15 IWC Wage Order 4-2001.

16 27. Defendants failed to provide Plaintiff and Class members proper rest periods, or
17 compensation in lieu thereof, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Due
18 to the busy nature of their work schedule, they were unable to always take, and not authorized to take,
19 10-minute rest periods for every four hours of work or major fraction thereof. When they were able
20 to take a rest period, they were oftentimes late or cut short. Defendants also required Plaintiff and
21 Class Members to remain on work premises during their rest periods.

22 28. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
23 payment of all rest period compensation which she and Class members are owed for four years
24 preceding the filing of this Action, according to proof.

25 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 4-2001)

6 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as fully set forth
7 herein.

8 30. Plaintiff and Class members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7,
10 512 and IWC Wage Order 4-2001.

11 31. Defendants failed to provide Plaintiff and Class members proper meal periods, or
12 compensation in lieu thereof, in violation of Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001.
13 Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-
14 minute meal period for every shift worked that exceeded five or more hours in duration and a second
15 30-minute meal period for every shift worked over ten hours in duration, but were not paid premium
16 wages of one hour's pay for each missed meal period. When they were able to take a first or second
17 meal period, they were oftentimes late or cut short. This violates Labor Code §§ 226.7, 512 and IWC
18 Wage Order 4-2001.

19 32. Pursuant to Labor Code §§ 226.7, 512 and IWC Wage Order 4-2001, Plaintiff seeks
20 the payment of all meal period compensation which she and Class members are owed for four years
21 preceding the filing of this Action, according to proof.

22 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMURSE BUSINESS EXPENSES

(LABOR CODE § 2802)

33. Plaintiff incorporates paragraphs 1 through 32 of this Complaint as fully set forth herein.

34. Pursuant to California Labor Code § 2802, Defendants must indemnify Plaintiff and Class Members for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties.

35. Plaintiff and Class Members used their personal cell phones and vehicles for execution of duties while working for Defendants. Defendants failed to reimburse Plaintiff or Class Members for these expenses incurred in the discharge of work duties, including but not limited to mileage and depreciation of their vehicle and cellular phone expenses.

36. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

37. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

38. Plaintiff incorporates paragraphs 1 through 37 of this Complaint as though fully set forth herein.

1 39. Section 226(a) of the California Labor Code requires Defendants to provide wage
2 statements to employees. In those wage statements, Defendants must provide an accurate itemized
3 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
5 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (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 than a social security number,
9 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
10 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
12 226(a).

13 40. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
14 accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members
15 were not paid all wages due, including premium wages for unauthorized meal and rest periods. As
16 such, the wage statements provided by Defendants failed to accurately state all gross wages earned,
17 in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2),
18 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect
19 during the pay period and the corresponding number of hours worked at each hourly rate by the
20 employee including overtime pay, in violation of Labor Code § 226(a)(9).

21 41. Defendant's willful conduct in failing to provide Class Members with accurate
22 itemized wage statements caused Plaintiff and members of the Class to be injured by not having been
23 paid all wages due and being issued wage statements which do not reflect all information required by
24 Labor Code § 226(a). As a result, Plaintiff and members of the Class are entitled to penalties pursuant
25 to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period
26 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and
28 reasonable attorneys' fees pursuant to Labor Code § 226(h).

1 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

2 **IX.**

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY WAGES DUE AT**

5 **SEPARATION OF EMPLOYMENT**

6 **(LABOR CODE §§ 201-203 AND 227.3)**

7 42. Plaintiff incorporates paragraphs 1 through 41 of this Complaint as though fully set
8 forth herein.

9 43. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
10 due within 72 hours after resignation of employment or the day of termination of employment. Labor
11 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
12 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
13 or an action is commenced. The penalty cannot exceed 30 days of wages.

14 44. Defendants paid Plaintiff and Class Members their final wages beyond the time frames
15 set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class
16 Members were not paid all wages due and owing throughout the course of their employment,
17 including all minimum and overtime wages due and premium wages for missed and denied meal and
18 rest periods, as detailed above. Consequently, at the time of their separation from employment with
19 Defendants, they were not paid all final wages due and owing for the entirety of their employment.
20 In addition, when Plaintiff was terminated, he was not issued his final wages immediately upon his
21 termination – instead, he was issued his final wages a day later.

22 45. More than 30 days have passed since Plaintiff and Class Members have left
23 Defendants' employ.

24 46. As a consequence of Defendants' willful conduct in not paying wages owed timely
25 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
26 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
27 employment.

28 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

X.
SEVENTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

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6 47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set
7 forth herein.

8 48. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and
9 on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant
10 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
11 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
12 and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest
13 within the meaning of Code of Civil Procedure § 1021.5.

14 49. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
15 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
16 appropriate equitable relief.

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

19 51. Wage and hour laws express fundamental public policies. Properly providing
20 employees with all wages due and reimbursement of all expenses incurred in the discharge of their
21 employment are fundamental public policies of this State and of the United States. Labor Code §
22 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to
23 ensure that employees are not required or permitted to work under substandard and unlawful
24 conditions, and to protect law-abiding employers and its employees from competitors who lower their
25 costs by failing to comply with minimum labor standards.

26 52. Defendants have violated statutes and public policies. Through the conduct alleged
27 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
28 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair

1 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
2 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
3 guaranteed to all employees under law.

4 53. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
5 §17200 *et seq.* of the Business & Professions Code.

6 54. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
7 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
8 17200 *et seq.* of the Business & Professions Code.

9 55. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
10 similarly situated have been damaged in a sum as may be proven.

11 56. Unless restrained by this Court, Defendants will continue to engage in the unlawful
12 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
13 should make such orders or judgments, including the appointment of a receiver, as may be necessary
14 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
15 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
16 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
17 the money Defendants have unlawfully failed to pay.

18 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

19 **RELIEF REQUESTED**

20 WHEREFORE, Plaintiff prays for the following relief:

- 21 1. For compensatory damages, pursuant to Labor Code § 1194, in the amount of all
22 unpaid wages due to Plaintiff and members of the Class;
- 23 2. For compensatory damages in the amount of one hour of wages for each day on which
24 a meal and/or rest period was not properly provided to Plaintiff and Members, pursuant to Labor Code
25 §§ 226.7 and 512;
- 26 3. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
- 27 4. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
- 28 5. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant

1 to Labor Code § 2802;

2 6. For restitution and injunctive relief for unfair competition pursuant to Business &
3 Professions Code § 17200 *et seq.* for Plaintiff and Class Members;

4 7. An award providing for payment of costs of suit pursuant to Labor Code §§ 1194 and
5 2802 and other applicable law;

6 8. For injunctive relief and an award of attorneys' fees pursuant to Labor Code §§ 1194
7 and 2802 and other applicable law;

8 9. An award of prejudgment and post-judgment interest; and

9 10. Such other and further relief as this Court may deem just and proper.

10 Dated: October 10, 2022

Respectfully submitted,

11
12 GAINES & GAINES
A Professional Law Corporation

13
14 By: _____
15 DANIEL F. GAINES
16 EVAN S. GAINES
Attorneys for Plaintiff

17 **DEMAND FOR JURY TRIAL**

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

19 Dated: October 10, 2022

Respectfully submitted,

20 GAINES & GAINES
21 A Professional Law Corporation

22 By: _____
23 DANIEL F. GAINES
24 EVAN S. GAINES
Attorneys for Plaintiff

EXHIBIT C

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13 Attorneys for Defendant StoragePro Management Inc.,
erroneously sued as Storagepro, Inc.
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF NEVADA**

17
18 CHER LEE FAACKS, individually and on
behalf of all similarly situated individuals.

19 Plaintiff,

20 v.

21 STORAGEPRO MANAGEMENT, INC., a
California corporation, and DOES 1 through
22 10, inclusive,

23 Defendants.
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CASE NO: CU19-084121

CLASS ACTION

**FIRST AMENDED SETTLEMENT
AGREEMENT AND RELEASE OF CLAIMS**

Complaint Filed: September 13, 2019

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This First Amended Settlement Agreement and Release of Claims (“Settlement
3 Agreement”) is made and entered into by and between Plaintiff Cher Lee Faacks (“Faacks” or
4 “Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated,
5 and Defendant StoragePro Management, Inc. (“Defendant”), subject to the terms and conditions
6 herein and the Court’s approval.

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as “the Parties.”

10 2. Daniel F. Gaines, Alex P. Katofsky and Evan S. Gaines of Gaines & Gaines, APLC
11 are counsel of record for Plaintiff. For purposes of this settlement only, the firm of Gaines &
12 Gaines, APLC shall be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *Cher Lee Faacks, Plaintiff, v. StoragePro*
14 *Management, Inc., a California corporation, and Does 1 Through 10, Inclusive, Defendants,*” Case
15 No. 2CU19-084121, pending before the Superior Court of the State of California for the County of
16 Nevada.

17 4. The “Settlement Class” shall be defined as “all non-exempt employees employed
18 by Defendant in California at any time between September 13, 2015 and October 15, 2022” (the
19 “Class Period”). Defendant represents that this Class contains no more than 725 members who
20 worked no more than 50,000 workweeks during the Class Period.

21 5. Members of the Settlement Class shall collectively be referred to as a “Class
22 Member” or “Class Members.” Any Class Member who files a timely request for exclusion, as
23 detailed below, will be excluded from the final Settlement Class.

24 **B. General.**

25 1. On or about September 13, 2019, Plaintiff initiated the Action by filing a class action
26 complaint, on behalf of herself and all other putative class members. Plaintiff filed a First Amended
27 Complaint on or about November 5, 2019 which alleged representative claims for civil penalties
28 pursuant to PAGA and class claims for equitable relief pursuant to Business & Professions Code

1 section 17200, premised on underlying violations of Labor Code sections 201-202, 226(a), 226.3,
2 226.7, 510, 512, 1194, and 2802. Plaintiff subsequently dismissed her PAGA claims without
3 prejudice.

4 2. Extensive law and motion practice ensued relating to the validity of an arbitration
5 agreement entered into between the Parties. The arbitration issue culminated with the Court of
6 Appeal of the State of California, Third Appellate District, issuing a decision in case number
7 C092404 which upheld the trial court's ruling that Plaintiff was not required to arbitrate her unfair
8 competition claims.

9 3. On August 16, 2022, following their exchange of information regarding the
10 Settlement Class and the claims and defenses asserted by the Parties, counsel for the Parties
11 engaged in arm's-length negotiations with the help of mediator Brandon McKelvey, Esq., to reach
12 the basic terms of this Settlement.

13 4. As part of the Court approval process for this class action settlement, Plaintiff shall
14 file the Second Amended Complaint, attached hereto as Exhibit 3, which asserts direct class action
15 claims against Defendant for (1) failure to pay all wages (Labor Code § 510 and 1194); (2) failure
16 to provide rest periods or compensation in lieu thereof (Labor Code § 226.7; IWC Wage Order 4-
17 2001); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7,
18 and 512; IWC Wage Order 4-2001); (4) knowing and intentional failure to comply with itemized
19 employee wage statement provisions (Labor Code §§ 226(a), (e)); (5) failure to timely pay wages
20 due at separation of employment (Labor Code §§ 201-203); (6) failure to reimburse employee
21 business expenses (Labor Code § 2802); and (7) violation of Business and Professions Code §
22 17200 (the "Second Amended Complaint").

23 5. Defendant denies any liability or wrongdoing of any kind associated with the claims
24 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
25 purpose other than this settlement. Defendant contends that it has complied at all times with the
26 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
27 certification would be inappropriate because Plaintiff is not an adequate class representative,
28 Plaintiff's claims are not typical of putative class members, and individual issues predominate over

1 class issues. The Action, the negotiation and execution of this Settlement Agreement, and all acts
2 performed or documents executed pursuant to or in furtherance of the Settlement Agreement (i)
3 shall not be used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not
4 be an admission or evidence of fault on behalf of Defendant in any action before a civil, criminal,
5 or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
6 or evidence of the appropriateness of these or similar claims for class certification in the Action or
7 with respect to any other proceeding.

8 6. The Class Representative contends that Defendant violated the California Labor
9 Code and that this case is appropriate for class certification.

10 7. Class Counsel represent that they have conducted a thorough investigation into the
11 facts and law during the prosecution of this class action case, including the exchange of extensive
12 informal discovery and the review and verification of statistical data and other facts and information
13 provided by Defendant. Counsel for the Parties also represent that they have investigated the
14 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
15 potential defenses thereto, and the damages claimed by Plaintiff.

16 8. Based on their own independent investigation and evaluation, Class Counsel are of
17 the opinion (and will so represent to the Court) that settlement for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
19 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
20 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
21 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
22 that this settlement is fair and in the best interest of the Settlement Class.

23 9. The Parties agree that the settlement class described herein may be certified for
24 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
25 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
26 approved, the certification will have no force or effect and will immediately be revoked. The
27 Parties further agree that certification for purposes of the settlement is in no way an admission that
28 class certification is proper under the more stringent standard applied for litigation and that

1 evidence of this limited stipulation for settlement purposes only will not be admissible for any
2 purpose in this or any other proceeding.

3 **C. Terms of Settlement.**

4 1. The financial terms of the settlement are as follows:

5 (a) **Gross Settlement Amount:** The Parties agree to settle this Action for
6 Defendant's payment of the Gross Settlement Amount of Four Hundred Forty-Nine Thousand Fifty
7 U.S. Dollars (\$449,050.00) ("the Gross Settlement Amount"). The Gross Settlement Amount
8 includes the attorneys' fees of Class Counsel, litigation costs and expenses (which includes, without
9 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in
10 documenting the settlement, providing any notices required as part of the settlement, securing Court
11 approval of the settlement, and obtaining judgment in the Action), the enhancement payment to the
12 Class Representative, as approved by the Court, and all costs of administration, including, without
13 limitation, settlement administration fees and expenses. Defendant shall pay all employer payroll
14 tax obligations due on wage payments made from the Net Settlement Sum in addition to, and
15 separate and apart from, the Gross Settlement Amount.

16 (b) **Net Settlement Sum:** "Net Settlement Sum" is defined as the Gross
17 Settlement Amount less the amounts approved and awarded by the Court for: attorneys' fees and
18 documented litigation costs and expenses incurred or advanced by Class Counsel, the enhancement
19 payment to the Class Representative, and the costs of administering the settlement.

20 (c) **Calculation of the Individual Settlement Payments:** "Individual
21 Settlement Payments" means the portion of the Net Settlement Sum distributable to each Class
22 Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion
23 form). The Individual Settlement Payments will be calculated by dividing the Net Settlement Sum
24 by the total weeks worked by all participating Class Members in California in a non-exempt
25 position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall
26 be multiplied by the number of weeks each individual participating Class Member worked for
27 Defendant in California in a non-exempt position during the Class Period to yield their Individual
28

1 Payment Amount. Each Participating Settlement Class Member who does not opt out will receive
2 an Individual Payment Amount.

3 i. For tax purposes, each Individual Payment Amount will be
4 apportioned (a) 20% to wages (reported on an IRS Form W-2 and subject to applicable
5 withholdings); (b) 25% to penalties (reported on an IRS Form 1099); (c) 25% to interest (reported
6 on an IRS Form 1099); and (d) 30% to expense reimbursement (not reported on any IRS form). All
7 Individual Settlement Payments paid to Class Members will be subject to any applicable wage
8 garnishments, liens, or other legally mandated treatment as required by law.

9 (d) **Enhancement Payment to Class Representative:** The amount awarded to
10 the Class Representative as an enhancement payment will be set by the Court in its discretion, not
11 to exceed \$15,000.00. This amount will be deducted from the Gross Settlement Amount. An IRS
12 Form 1099 will be issued to the Class Representative for her enhancement payment. Defendant
13 agrees not to dispute or otherwise object to the enhancement payment if Plaintiff requests \$15,000
14 or less,

15 (e) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
16 deducted from the Gross Settlement Amount in an amount to be set by the Court taking into account
17 the settlement award that has been made available for the Settlement Class by the efforts of Class
18 Counsel. The amount awarded shall not exceed 40% of the Gross Settlement Amount (i.e.
19 \$179,620.00). An IRS Form 1099 will be issued to Class Counsel with respect to its award of
20 attorneys' fees. Defendant agrees not to dispute or otherwise object to the attorneys' fee award
21 requested by Class Counsel so long as the request does not exceed \$179,620.

22 (f) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
23 the Gross Settlement Amount in an amount to be set by the Court for documented out-of-pocket
24 litigation costs and expenses, not to exceed \$20,000.00. An IRS Form 1099 will be issued to Class
25 Counsel with respect to its award of costs and expenses. Defendant agrees not to dispute or
26 otherwise object to the attorneys' cost award requested by Class Counsel so long as the request
27 does not exceed \$20,000.

1 (g) **Settlement Administration Costs:** The fees and other charges of the
2 Settlement Administrator to administer the Settlement are expected to total no more than \$12,000,
3 and will be paid from the Gross Settlement Amount. These fees shall include any costs associated
4 with the required tax reporting on any Individual Settlement Payments, and the issuing of any and
5 all W-2 and 1099 forms. Subject to approval of the Court, the Parties have agreed that Phoenix
6 Settlement Administrators will serve as a neutral third-party claims' administrator ("Settlement
7 Administrator") to perform all acts related to providing notice to the Settlement Class. Settlement
8 Administrator shall be responsible for (a) printing and distributing the Court-approved Notice of
9 Class Action Settlement ("Class Notice") to all Class Members; (b) administering the settlement;
10 (c) processing exclusions and objections; (d) resolving disputes; (e) distributing the Gross
11 Settlement Amount as directed by the Court and set forth herein; (f) tax reporting; (g) providing
12 necessary weekly status reports; and (h) other duties and responsibilities set forth herein.

13 (h) **No Warranty by Defendant:** Plaintiff understands and agrees that
14 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
15 makes no representations regarding tax obligations or consequences, if any, related to this
16 Settlement Agreement.

17 **D. Release of Claims.**

18 1. Upon the Effective Date, and subject to Defendant's full payment of the Gross
19 Settlement Amount and payroll taxes due hereunder, Plaintiff and all Settlement Class members
20 who do not timely opt-out will be deemed to have fully released and discharged Defendant, and
21 each of its present and former officers, directors, members, owners, managers, shareholders,
22 agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities,
23 consultants, attorneys, successors or assigns ("Released Parties") from any and all Released
24 Claims which arose during their employment in a non-exempt position in California during the
25 Class Period. "Released Claims" are all claims and allegations asserted in the Second Amended
26 Complaint, including all claims for unpaid wages, meal and rest period premiums/wages,
27 inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including
28

1 claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and
2 2802, the applicable Industrial Wage Commission Wage Order, and Business and Professions
3 Code section 17200 as they relate to the underlying Labor Code claims referenced above, which
4 arose during employment in a non-exempt position in California during the Class Period. No
5 PAGA claims are encompassed in this release, and no such claims shall be released by this
6 Settlement.

7 2. Each and every Settlement Class Member who has not submitted a timely and valid
8 opt-out request shall be permanently enjoined and forever barred from prosecuting any and all
9 Released Claims against the Released Parties.

10 **E. Notice and Exclusion Process.**

11 1. Within twenty (20) calendar days after entry of the order granting preliminary
12 approval of this Settlement, Defendant shall provide to the Settlement Administrator a list of all
13 Class Members, including their last known addresses, telephone numbers, social security numbers,
14 and their dates of employment in a non-exempt position in California during the Class Period
15 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
16 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff’s Counsel. All
17 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
18 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
19 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
20 storage, custody, use, and/or dissemination of the confidential information. Such information must
21 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

22 2. A notice of pendency of class action, proposed settlement and hearing date for Court
23 approval (“Class Notice”) in the form attached hereto as Exhibit 1, and as approved by the Court,
24 shall be sent by the Settlement Administrator to the Class Members, by first class mail, within thirty
25 (30) calendar days after entry of the order granting preliminary approval. Attached to the Class
26 Notice will be a request for exclusion form (“Request for Exclusion Form”) in the form attached
27 hereto as Exhibit 2.

1 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
2 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
3 presumed that if an envelope has not been returned within forty-five (45) days of the mailing that
4 the Class Member received the Class Notice. In the event of returned or non-deliverable notices,
5 the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
6 notices.

7 4. Each Class Member will be fully advised of the settlement, the ability to object to
8 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
9 inform the Class Members of the Court-established deadlines for filing objections and a Request
10 for Exclusion Form.

11 5. Each Class Notice will contain personalized information setting forth the number of
12 weeks each Class Member worked for Defendant in California in a non-exempt position during the
13 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
14 disputes any of the information listed on his or her Class Notice, the Class Member may produce
15 evidence to the Settlement Administrator showing such information the Class Member contends
16 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
17 however, and the Settlement Administrator's decision on these matters will be final. The Class
18 Notice will also set forth IRS W-9 information if required.

19 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
20 to receive an Individual Payment Amount, which shall be mailed to them if and when the Effective
21 Date occurs.

22 7. In order to elect not to participate in the Settlement, a Class Member must submit a
23 Request for Exclusion Form and mail it to the Settlement Administrator no later than forty-five (45)
24 calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to Class
25 Members, unless the Court requires a longer period, in which case the Court ordered exclusion
26 period will apply. The date of the postmark shall be deemed the date of submission. The timeliness
27 of submitted Request for Exclusion Forms will be determined by valid postmark. If the 45th day
28

1 falls on a Sunday or federal holiday, the time to request exclusion will be extended to the next day
2 on which the U.S. Postal Service is open.

3 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
4 for those Class Members whose Class Notice and Exclusion Form are returned as “undeliverable.”
5 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
6 on which the U.S. Postal Service is open.

7 9. The Settlement Administrator will search for additional addresses on returned mail
8 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
9 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
10 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
11 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
12 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
13 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
14 Settlement Administrator will search using the social security number for a more current address.
15 If no address is found within 10 days, no further action is required.

16 10. The Settlement Administrator will notify the Parties of the total number of valid
17 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
18 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
19 and Request for Exclusion Forms to Class Members).

20 11. In order to object to the settlement, a Class Member must mail his or her objection
21 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
22 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
23 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
24 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
25 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
26 extended for any reason.

27 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
28 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration

1 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
2 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
3 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
4 listing the amount of all payments to be made to each Class Member without names or personal
5 identifying information.

6 13. Defendant shall deposit the Gross Settlement Amount, plus all payroll taxes due
7 hereunder, with the Settlement Administrator no later than ten (10) calendar days after the Effective
8 Date. The effective date of this Settlement Agreement (“Effective Date”) is the date the Court signs
9 an order granting final approval of the settlement and entering judgment thereon. If objections to
10 the settlement are filed and not withdrawn, the Effective Date of the settlement is the sixty-fifth
11 (65th) day after notice of the final approval order is mailed, unless an appeal is filed, in which case
12 the Effective Date is the day after (a) the settlement is upheld by the Court of Appeals, or (b) all
13 appeals are dismissed.

14 14. The Settlement Administrator shall disburse the Gross Settlement Amount within
15 ten (10) calendar days after its receipt thereof. Class Members must cash each of their Individual
16 Payment Amount checks within one hundred eighty (180) calendar days after they are mailed by
17 the Settlement Administrator. The value of any checks uncashed more than one hundred eighty
18 (180) days after mailing shall be paid to the State of California State Controller’s Office, to be held
19 in the name of the respective Class Member.

20 15. The Settlement Administrator will establish and maintain and use an internet
21 website to post information of interest to Class Members including the date, time, and location of
22 the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary
23 Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the
24 Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class
25 Representative Service Payment, the Final Approval Order and the Judgment. These documents
26 will remain online for no fewer than one year after the entry of the Judgment.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

- 5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
7 (b) approving as to form and content the proposed Class Notice;
8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;
10 (d) preliminarily certifying the Settlement Class for purposes of settlement;
11 (e) preliminarily setting attorneys' fees and costs payable to Class Counsel;
12 (f) preliminarily setting the enhancement payment to the Class Representative;
13 (g) preliminarily approving Phoenix Settlement Administrators as the
14 Settlement Administrator and its estimated fees and costs of \$12,000; and
15 (h) Permitting Plaintiff to file the Second Amended Complaint.

16 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

17 1. In connection with the hearing on final approval of the settlement provided for in
18 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
19 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
20 by the Court):

- 21 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
22 and adequate, and directing consummation of its terms and provisions;
23 (b) approving Class Counsel's application for an award of attorneys' fees and
24 reimbursement of documented litigation costs and expenses, the enhancement payment to the
25 Class Representative, and the costs of administering the settlement; and
26 (c) Entering judgment in this Action in accordance with this Stipulation,
27 pursuant to Cal. Rules of Court, Rule 3.769(h).
28

1 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
2 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
3 on final approval (unless otherwise ordered by the Court).

4 **H. Miscellaneous Provisions:**

5 1. **Voiding the Agreement.**

6 A failure of the Court to approve any material condition of this Settlement Agreement which
7 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
8 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
9 and unenforceable as to all Parties herein at the option of any Party.

10 2. **Parties' Authority.**

11 The signatories hereto represent that they are fully authorized to enter into this Settlement
12 Agreement and bind the Parties hereto to the terms and conditions hereof.

13 3. **Mutual Full Cooperation.**

14 The Parties agree to fully cooperate with each other to accomplish the terms of this
15 Stipulation of Settlement, including but not limited to, execution of such documents and such other
16 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
17 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
18 by this Settlement Agreement and any other efforts that may become necessary by order of the
19 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
20 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
21 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
22 Court's preliminary and final approval of the settlement.

23 4. **No Prior Assignments.**

24 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
25 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
26 entity any portion of any liability, claim, demand, action, cause of action or rights released and
27 discharged by this Stipulation of Settlement.

28 *///*

1 5. **No Admission.**

2 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
3 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
4 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
5 Settlement Agreement with the intention of avoiding further disputes and litigation with the
6 attendant inconvenience and expenses. This Settlement Agreement is a settlement document and
7 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
8 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
9 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

10 ~~¶~~

11 6. **Notices.**

12 Unless otherwise specifically provided herein, all notices, demands or other
13 communications given hereunder shall be in writing and shall be deemed to have been duly given
14 as of the third business day after mailing by United States registered or certified mail, return receipt
15 requested, addressed:

16 **To Plaintiff and the Settlement Class:**

17 Daniel F. Gaines, Esq.
18 Alex P. Katofsky, Esq.
19 Evan S. Gaines, Esq.
20 GAINES & GAINES, APLC
21 4550 E. Thousand Oaks Blvd., Suite 100
22 Westlake Village, CA 91362

23 **To Defendant:**

24 Gabriel N. Rubin, Esq.
25 Julie Y. Zong, Esq.
26 JACKSON LEWIS P.C.
27 50 California Street, 9th Floor
28 San Francisco, CA 94111-4615

29 7. **Construction.**

30 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
31 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement

1 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
2 any Party or his or its counsel participated in the drafting of this Settlement Agreement.

3 **8. Captions and Interpretations.**

4 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
5 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
6 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
7 recital.

8 **9. Modification.**

9 This Settlement Agreement may not be changed, altered, or modified, except in writing and
10 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
11 discharged except by performance in accordance with its terms or by a writing signed by each of
12 the Parties hereto on their attorneys.

13 **10. Integration Clause.**

14 This Settlement Agreement contains the entire agreement between the Parties relating to
15 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
16 understandings, representations, and statements, whether oral or written and whether by a Party or
17 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
18 writing.

19 **11. Binding on Assigns.**

20 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
21 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

22 **12. Governing Law.**

23 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
24 according to the laws of the State of California, without giving effect to any conflict of law
25 principles or choice of law principles.

26 **13. Signatures of All Class Members Unnecessary to be Binding.**

27 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
28 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,

1 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
2 provided herein and such shall have the same force and effect as if this Settlement Agreement was
3 executed by each Class Member.

4 **14. Counterparts.**

5 This Settlement Agreement may be executed in counterparts, and when each Party has
6 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
7 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
8 Agreement, which shall be binding upon and effective as to all Parties.

9 **15. Confidentiality**

10 Until Plaintiff files her motion for preliminary approval of the class action settlement, the
11 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
12 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
13 agencies, or as otherwise required by law.

14 **16. No Publicity.**

15 Plaintiff and her Counsel will not contact the media about the settlement or respond to any
16 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
17 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post any
18 information about the settlement on social media or their firms' websites.

19 **17. Escalator Provision re: Representation Regarding Class Size.**

20 Defendant has represented to Plaintiff and her counsel that the Settlement Class includes no
21 more than 725 individuals who worked no more than 50,000 workweeks during the Class Period.
22 Should the final total of Class Members exceed 725 and/or the final total of workweeks exceed
23 50,000 by five (5) percent or more, then Plaintiff may terminate this Agreement unless Defendant
24 agrees to increase the Gross Settlement Amount on a pro rata basis based on the proportionate
25 increase (with the larger percentage increase controlling).

26 **18. Election to Vacate the Settlement**

1 If more than ten percent (10%) of the Class Members collectively timely request exclusion,
2 Defendant shall have the option, in its sole discretion, and notwithstanding any other provisions of
3 this Agreement, to withdraw from the Agreement in its entirety, whereupon the Agreement shall
4 be null and void for any and all purposes. If Defendant elects to exercise its rights under this
5 provision, it will so notify Class Counsel and the Court in writing no later than ten (10) business
6 days after receiving written notice via overnight delivery from the Settlement Administrator of the
7 number of opt-outs.

8
9
10
11 Dated: ~~December~~ _____, 2022 ~~June~~ _____,
12 2023

By:

13 CHER LEE FAACKS
14 Plaintiff and Class Representative

15 Dated: ~~December~~ _____, 2022 ~~June~~ _____,
16 2023

17 STORAGEPRO MANAGEMENT, INC.
By:

18 Its: _____

19 **APPROVED AS TO FORM AND CONTENT:**

20 Dated: ~~December~~ _____, 2022 ~~June~~ _____,
21 2023

GAINES & GAINES, APLC

By: _____

22 Daniel F. Gaines, Esq.
23 Alex P. Katofsky, Esq.
24 Counsel for Plaintiff and Class
25 Representative

26 Dated: ~~December~~ _____, 2022 ~~June~~ _____,
27 2023

JACKSON LEWIS P.C.

By: _____

28 Gabriel N. Rubin, Esq.
Julie Y. Zong, Esq.
Counsel for Defendant

EXHIBIT 1

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

CHER LEE FAACKS, individually and on behalf of all similarly situated individuals.

Plaintiff,

v.

STORAGEPRO MANAGEMENT, INC. , a California corporation, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CU19-084121

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT AND FINAL HEARING

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$449,050 to pay claims to all current and former non-exempt California employees of Defendant StoragePro Management, Inc. (“Defendant”) employed from September 13, 2015 through October 15, 2022.
- The settlement resolves a lawsuit over whether Defendant failed to pay all wages; provide meal and rest periods or compensation in lieu thereof; timely issued wages upon separation of employment; issued accurate and complete wage statements; and failed to reimburse employee business expenses. It avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$179,620 as attorneys’ fees and \$20,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money (if any) could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Arm and J Corporation about the legal claims that were brought in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On September 13, 2019, Plaintiff Cher Lee Faacks filed this lawsuit in the Nevada County Superior Court. The lawsuit, as amended, alleges violations of the California Labor Code and Business & Professions Code. The Lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant employed from September 13, 2015 through October 15, 2022 ("Class Period"). The lawsuit alleges that members of the Class were not paid all wages; were not provided all meal and rest periods or compensation in lieu thereof; were not timely issued wages upon separation of employment; were not issued accurate and complete wage statements; and were not reimbursed for all business expenses they incurred. It seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the material allegations in the Lawsuit.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
 Alex P. Katofsky, Esq.
 Evan S. Gaines, Esq.
 GAINES & GAINES, APLC
 4550 E. Thousand Oaks Boulevard, Suite 100
 Westlake Village, CA 91362
 Phone: (866) 550-0855

Defendant's Attorneys

Gabriel N. Rubin, Esq.
 Julie Y. Zong
 JACKSON LEWIS P.C.
 50 California Street, 9th Floor
 San Francisco, CA 94111-4615

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's Attorneys think the settlement is fair, reasonable and adequate and in the best interests of all Class members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt California employees of Defendant employed from September 13, 2015 through October 15, 2022.

C. What does the Settlement provide?

1. Gross Settlement Amount.

Defendant will pay \$449,050 (the "Gross Settlement Amount") to settle the lawsuit. The following sums will be paid from the Gross Settlement Amount: (1) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$179,620 and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$20,000; (2) an enhancement payment to the Class Representative set by the court, not to exceed \$15,000, for her service in the Action; and (3) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$12,000. The amount of the Gross Settlement Amount remaining after these payments is the "Net Settlement Sum."

2. Individual Settlement Payments.

Your share of the Net Settlement Sum will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date, and subject to Defendant's full payment of the Gross Settlement Amount and payroll taxes due hereunder, Plaintiff and all Settlement Class members who do not timely opt-out will be deemed to have fully released and discharged Defendant, and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assigns ("Released Parties") from any and all Released Claims which arose during their employment in a non-exempt position in California during the Class Period.

"Released Claims" are all claims and allegations asserted in the Second Amended Complaint, including all claims for unpaid wages, meal and rest period premiums/wages, inaccurate wage statements, failure to reimburse expenses, and waiting time penalties, including claims arising under Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 1194 and 2802, the applicable Industrial Wage Commission Wage Order, and Business and Professions Code section 17200 as they relate to the

underlying Labor Code claims referenced above, which arose during employment in a non-exempt position in California during the Class Period. No PAGA claims are encompassed in this release, and no such claims shall be released by this Settlement.

E. How Is My Share Of The Settlement Calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an “Individual Settlement Payment,” which is a portion of the Net Settlement Sum distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Settlement Payment will be calculated by dividing the Net Settlement Sum by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Settlement Payment. Each Participating Settlement Class Member who does not opt out will receive an Individual Settlement Payment.

For tax purposes, each Individual Settlement Payment will be allocated (a) 20% to wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 25% to penalties (reported on an IRS Form 1099); (c) 25% to interest (reported on an IRS Form 1099); and (d) 30% to expense reimbursement (not reported on any IRS form).

All Individual Settlement Payment paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [_____] weeks while employed in a non-exempt position in California from September 13, 2015 through October 15, 2022. Based on these weeks worked, you are entitled to an Individual Settlement Payment of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [REDACTED]. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Settlement Hearing”) on _____, at _____ a.m., in Courtroom 6 of the Nevada County Superior Court, located at 201 Church Street, Nevada City, California 95959. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiff’s Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [www.etc.] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [redacted]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than [redacted].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than [redacted].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" ~~which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined.~~ The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the Administrator's website at [URL of website]. The relevant Settlement documents will remain on the Administrator's website for no fewer than one year after the entry of Judgment. You can also examine the pleadings and other records in the Lawsuit at any time during regular business hours at the Office of the Clerk of the Nevada County Superior Court, located at 201 Church Street, Nevada City, CA 95959.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number]. Reference the StoragePro Management Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**