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*[Additional counsel on next page]*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN JOAQUIN**

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

Plaintiffs,

v.

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

Defendants.

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

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND PAGA ACTION  
SETTLEMENT**

Date: **AUG 06 2024**  
Time: **9:00 AM**

Judge: Hon. George J. Abdallah  
Dept.: 10A

8-6-24  
Filed **STEPHANIE BOHRER, CLERK**  
By \_\_\_\_\_ DEPUTY

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Attorneys for PLAINTIFF LUIS VAZQUEZ

1 This matter having come before the Honorable Judge George Abdallah of the Superior Court of  
2 the State of California, in and for the County of San Joaquin, at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_,  
3 2024, with Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC, Shani O. Zakay, Esq. of the Zakay  
4 Law Group, APLC, Daniel Gaines, Esq. of Gaines & Gaines, APLC, and Drew Lewis, Esq. of Drew  
5 Lewis, PC as counsel for Plaintiffs Martin Mariscal, Daniel Garcia, Rafael Rojas, Jose Hernandez and  
6 Luis Vazquez (“Plaintiffs”), and Roger M. Masukhani, Esq., Bimali Walgampaya, Esq., and Heather  
7 T. Daiza, Esq. of Gordon Rees Scully Mansukhani, LLP, appearing for Defendants JANCO  
8 INDUSTRIES, INC., TERRY ALEXANGER and ANDREW ALEXANDER (“Defendants”). The  
9 Court, having carefully considered the briefs, argument of counsel and all the matters presented to the  
10 Court, and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of  
11 Class Action Settlement.

12 **IT IS HEREBY ORDERED:**

13 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA  
14 Action Claims and Release of Claims (“Settlement Agreement” or “Agreement”), a true and correct  
15 copy of which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the  
16 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of  
17 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

18 2. This Order incorporates by reference the definitions in the Agreement, and all terms  
19 defined therein shall have the same meaning in this Order as set forth in the Agreement.

20 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that  
21 Defendants shall pay is Two Million Dollars and Zero Cents (\$2,000,000.00). It appears to the Court  
22 on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as to all  
23 Class Members when balanced against the probable outcome of further litigation relating to  
24 certification, liability, and damages issues. It further appears that investigation and research have been  
25 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It  
26 further appears to the Court that settlement at this time will avoid substantial additional costs by all  
27 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the  
28 litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and

1 non-collusive arms-length negotiations.

2 4. The Court preliminarily finds that the Settlement appears to be within the range of  
3 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court  
4 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily  
5 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and  
6 reasonable when balanced against the probable outcome of further litigation relating to certification,  
7 liability, and damages issues.

8 5. Plaintiffs seek a Class Counsel Award in the amount of up-to 35% of the Total Settlement  
9 Amount, currently estimated at Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00), plus  
10 reimbursement of actually incurred litigation cost in an amount of up to Thirty Thousand Dollars and  
11 Zero Centers (\$30,000.00), and proposed Class Representative Service Award to the Class  
12 Representatives Martin Mariscal, Daniel Garcia, Rafael Rojas, and Jose Hernandez of not more than  
13 Fifteen Thousand Dollars (\$15,000.00) each, and a propose Class Representative Service Award to  
14 Class Representative Luis Vazquez of not more than Thirty Thousand Dollars (\$30,000.00). While  
15 these awards appear to be within the range of reasonableness, the Court will not approve the Class  
16 Counsel Award or the Class Representative Service Award until the Final Approval Hearing.

17 6. The Court recognizes that Plaintiffs and Defendants stipulate and agree to certification  
18 of a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any  
19 other proceeding should this Settlement not become final. For settlement purposes only, the Court  
20 conditionally certifies the following Class:

21 All non-exempt employees who are or previously were employed by  
22 Defendant Janco Industries, Inc. and performed work in California during  
23 the period beginning August 19, 2018 to January 12, 2024

24 7. The Court concludes that, for settlement purposes only, the Class meets the requirements  
25 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is  
26 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)  
27 common questions of law and fact predominate, and there is a well-defined community of interest  
28 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the

1 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will  
2 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other  
3 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified  
4 to act as counsel for the Class Representative in his individual capacity and as the representative of the  
5 Class Members.

6 8. The Court provisionally appoints Plaintiffs Martin Mariscal, Daniel Garcia, Jose  
7 Hernandez, Rafael Rojas and Luis Vazquez as the representatives of the Class.

8 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,  
9 APC, Shani Zakay, Esq. of the Zakay Law Group, APLC, Drew Lewis, Esq. of Drew Lewis, PC and  
10 Daniel Gaines, Esq. of Gaines & Faines, APLC as Class Counsel for the Class Members.

11 10. The Court hereby approves, as to form and content, the Proposed Class Notice ("Class  
12 Notice") attached to the Agreement as **Exhibit "A"**. The Court finds that the notice appears to fully  
13 and accurately inform the Class Members and Aggrieved Employees of all material elements of the  
14 proposed Settlement, including the right of any Class Member to be excluded from the Class by  
15 submitting a written request for exclusion, and of each Class Member's right and opportunity to object  
16 to the Settlement. The Court further finds that the distribution of the notices substantially in the manner  
17 and form set forth in the Agreement and this Order meets the requirements of due process, is the most  
18 reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons  
19 entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms  
20 set forth in the Agreement.

21 11. The Court hereby appoints Apex Class Action LLC, as Settlement Administrator. Within  
22 fifteen (15) calendar days after the Preliminary Approval Date, Defendant shall confirm with the  
23 Settlement Administrator the Class Data, including information regarding Class Members that  
24 Defendant will in good faith compile from its records, including each Class Member's full name; last  
25 known mailing address; Social Security Number; and start dates and end dates of employment. No later  
26 than twenty-one (21) calendar days after receiving the Class Data from Defendant, the Settlement  
27 Administrator shall mail copies of the Notice Packet to all Class Members via regular First-Class U.S.  
28 Mail.

1           12.     The Court hereby preliminarily approves the proposed procedure for exclusion from the  
2 Settlement. Any Class Member may individually choose to opt out of and be excluded from the  
3 Settlement as provided in the Notice by following the instructions for requesting exclusion from the  
4 Settlement of the Released Class Claims that are set forth in the Notice. All requests for exclusion must  
5 be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the  
6 Settlement Administrator mails the Notice Packets to Class Members or, in the case of re-mailed  
7 Notice, not more than fifteen (15) days from the original Response Deadline. Any such person who  
8 chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual  
9 Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to  
10 object, appeal or comment thereon. Class Members who have not requested exclusion shall be bound  
11 by all determinations of the Court, the Agreement, and Judgment.

12           13.     Any Class Member who has not opted out may appear at the final approval hearing and  
13 may object or express the Class Member's views regarding the Settlement and may present evidence  
14 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined  
15 by the Court as provided in the Notice. Class Members will have forty-five (45) calendar days from the  
16 date the Settlement Administrator mails the Class Notice to postmark their written objections to the  
17 Settlement Administrator.

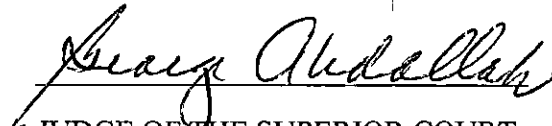
18           14.     A final approval hearing shall be held before this Court on 12-4-24 at  
19 9:00 AM/PM in Department 10A of the San Joaquin County Superior Court to determine all  
20 necessary matters concerning the Settlement, including: whether the proposed settlement of the Action  
21 on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should  
22 be finally approved by the Court; whether an Order Granting Final Approval should be entered herein;  
23 whether the plan of allocation contained in the Agreement should be approved as fair, adequate and  
24 reasonable to the Class; and to finally approve the Class Counsel Award, Class Representative Service  
25 Award, and the Claims Administration Expenses. All papers in support of the motion for final approval  
26 and the Motion for Class Counsel Award and Class Representative Service Award shall be filed with  
27 the Court and served on all counsel following the expiration of the Response Deadline.

28           15.     In the event the Settlement does not become effective in accordance with the terms of the

1 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become  
2 effective for any reason, this Settlement Agreement shall be rendered null and void and shall be vacated,  
3 and the Parties shall revert to their respective positions as of before entering into the Agreement. In  
4 such an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order,  
5 shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to  
6 alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it  
7 is not approved.

8       16. The Court reserves the right to adjourn or continue the date of the final approval hearing  
9 and all dates provided for in the Agreement without further notice to Class Members and retains  
10 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

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14 Dated: Aug. 6, 2024

  
15 JUDGE OF THE SUPERIOR COURT  
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# **EXHIBIT 1**



1 **JCL LAW FIRM, APC**

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

20 *[Additional Counsel listed on following page]*

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

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

28 Plaintiffs,

v.

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

Defendants.

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

[Action Filed August 19, 2022]

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

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12 Attorneys for Plaintiff Luis Vazquez

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

8 **I. DEFINITIONS**

- 9 A. "Actions" shall mean the putative class action lawsuits designated *Mariscal, et al. v.*  
10 *Janco Industries, Inc.*, San Joaquin County Superior Court, Case No. STR-CV-UOE-  
11 2022-7290, filed August 19, 2022, *Hernandez, et al. v. Janco Industries, Inc.*, San  
12 Joaquin County Superior Court, Case No. STK-CV-UOE-2022-8790, filed  
13 September 30, 2022, and *Vazquez, et al. v. Janco Industries, Inc.*, San Joaquin County  
14 Superior Court, Case No. STK-CV-UOE-2022-9998, filed October 31, 2022.
- 15 B. "Claims Administration Expenses" shall mean the amount paid to the Claims  
16 Administrator from the Gross Settlement Amount for administering the Settlement  
17 pursuant to this Agreement currently estimated not to exceed \$13,000.00.
- 18 C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of  
19 Class and PAGA Action and Release of Claims.
- 20 D. "Attorneys' Expenses" means the award of expenses that the Court authorizes to be  
21 paid to Class Counsel for the expenses they have incurred of up to \$30,000.00.
- 22 E. "Attorneys' Fees" means the award of fees that the Court authorizes to be paid to  
23 Class Counsel for the services they have rendered to Plaintiffs and the Settlement  
24 Class in the Action not to exceed 35% of the Gross Settlement Amount, currently  
25 estimated to be \$700,000.00. Attorneys' Fees will be divided between Class Counsel  
26

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

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

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

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

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

14 J. "Class Representatives" shall mean Plaintiffs Martin Mariscal, Daniel Garcia, Rafael  
15 Rojas, Jose Hernandez, and Luis Vazquez.

16 K. "Court" means the Superior Court for the State of California, County of San Joaquin  
17 currently presiding over the Action.

18 L. "Defendant" and/or "Defendants" shall mean Janco Industries, Inc., Terry Alexander,  
19 and Andrew Alexander.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

10 **II. RECITALS**

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

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

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

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

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

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

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

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

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

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

12 **III. TERMS OF AGREEMENT**

13 A. Settlement Consideration and Settlement Payments by Defendants.

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

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

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

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

1 principal and all interest accrued.

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

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

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

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

1 Commission, other state wage and hour laws, the Americans with Disabilities Act, the  
2 Age Discrimination in Employment Act (ADEA), the Employee Retirement Income  
3 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment  
4 and Housing Act, the California Family Rights Act, the Family Medical Leave Act,  
5 California's Whistleblower Protection Act, California Business & Professions Code  
6 Section 17200 et seq., and any and all claims arising under any federal, state or other  
7 governmental statute, law, regulation or ordinance. Plaintiffs also waive and relinquish  
8 any and all claims, rights or benefits that they may have under California Civil Code  
9 § 1542, which provides as follows:

10  
11 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***  
12 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***  
13 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***  
14 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***  
15 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR***  
16 ***OR RELEASED PARTY.***

17  
18 Thus, notwithstanding the provisions of section 1542, and to implement a full and  
19 complete release and discharge of the Released Parties, Plaintiffs expressly  
20 acknowledge this Settlement Agreement is intended to include in its effect, without  
21 limitation, all claims Plaintiffs do not know or suspect to exist in Plaintiffs' favor at  
22 the time of signing this Settlement Agreement, and that this Settlement Agreement  
23 contemplates the extinguishment of any such claims. Plaintiffs warrant that each of  
24 them has read this Settlement Agreement, including this waiver of California Civil  
25 Code section 1542, and that Plaintiffs have consulted with or had the opportunity to  
26 consult with counsel of Plaintiffs' choosing about this Settlement Agreement and

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

20 L. Notice Procedure.

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

25 2. Notice Packets.

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a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached as **Exhibit A**. The Notice of Class Action Settlement shall inform Class Members and PAGA Group Members that they need not do anything in order to receive an Individual Settlement Payment and/or PAGA Group Members' individual shares of the PAGA Group Payment and to keep the Claims Administrator apprised of their current mailing address, to which the Individual Settlement Payments and/or PAGA Group Members' individual shares of the PAGA Group Payment will be mailed following each Funding Date. The Notice of Class Action Settlement shall set forth the release to be given by all members of the Class who do not request to be excluded from the Settlement Class and/or PAGA Group Members in exchange for an Individual Settlement Payment and/or PAGA Group Members' individual shares of the PAGA Group Payment, the number of Workweeks worked by each Class Member during the Class Period and PAGA Period, if any, and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement and each PAGA Group Members' share of the PAGA Group Payment, if any. The Claims Administrator shall use the Class Data to determine Class Members' Workweeks and PAGA Workweeks. The Notice will also advise the PAGA Group Members that they will release the Released PAGA Claims and will receive their share of the PAGA Group Payment regardless of whether they request to be excluded from the Settlement.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
2 represent they are expressly authorized by the Parties whom they represent to negotiate  
3 this Agreement and to take all appropriate Action required or permitted to be taken by  
4 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
5 documents required to effectuate the terms of this Agreement. The persons signing  
6 this Agreement on behalf of Defendants represents and warrants that he/she is  
7 authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and  
8 warrant that they are authorized to sign this Agreement and that they have not assigned  
9 any claim, or part of a claim, covered by this Settlement to a third-party.

10 T. No Public Comment: The Parties and their counsel agree that they will not issue any  
11 press releases, initiate any contact with the press, respond to any press inquiry, or have  
12 any communication with the press about the fact, amount or terms of the Settlement  
13 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any  
14 of its terms for any marketing or promotional purposes. Further, Class Counsel will  
15 not include, reference, or use the Settlement Agreement for any marketing or  
16 promotional purposes, either before or after the Motion for Preliminary Approval is  
17 filed. Except a may be necessary to enforce the provisions of this Agreement, or  
18 otherwise prohibited by law, including California Code of Civil Procedure section  
19 1001-1002, and Cal. Gov. Code §§ 12900 *et seq.*, Plaintiffs and Class Counsel shall  
20 not directly or indirectly disclose the facts, Gross Settlement Amount, or terms of this  
21 individual, class and representative settlement to the public or to anyone. Nothing  
22 herein will restrict Class Counsel from including publicly available information  
23 regarding this settlement in future judicial submissions regarding Class Counsel's  
24 qualifications and experience for adequacy as attorneys for a putative class or  
25 representative group to justify an award of attorney fees. Nothing shall prevent the  
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1 communication by Class Counsel or any parties to respond to specific questions  
2 received from the Settlement Class Members regarding the terms of the Agreement.

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

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

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

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

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

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

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

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

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

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

20 DATED: 04/01/2024

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

Martin Mariscal

21 DATED: 04/02/2024

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

Daniel Garcia

22  
23 DATED: 04/02/2024

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

Rafael Rojas

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25 DATED: 03/20/2024

Jose Hernandez

Jose Hernandez

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DATED: \_\_\_\_\_

\_\_\_\_\_  
Luis Vazquez

IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: \_\_\_\_\_

\_\_\_\_\_  
JANCO INDUSTRIES, INC.

\_\_\_\_\_  
Terry Alexander; Andrew Alexendar

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
CEO/CFO; Vice President

\_\_\_\_\_  
Title

DATED: March 26, 2024 | 12:23 PM PDT

DocuSigned by:  
*Terry Alexander*

\_\_\_\_\_  
Terry Alexander CEO/CFO

DATED: March 26, 2024 | 10:14 AM EDT

DocuSigned by:  
*Andrew Alexander*

\_\_\_\_\_  
Andrew Alexander Vice President

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: \_\_\_\_\_

\_\_\_\_\_  
JCL LAW FIRM, A.P.C.

By: \_\_\_\_\_

\_\_\_\_\_  
Attorneys for Plaintiff and the Settlement Class Members

DATED: \_\_\_\_\_


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ZAKAY LAW GROUP, APLC

By: \_\_\_\_\_

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Attorneys for Plaintiff and the Settlement Class Members

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DATED: 04 / 01 / 2024

  
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Luis Vazquez

IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: \_\_\_\_\_

\_\_\_\_\_  
JANCO INDUSTRIES, INC.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

DATED: \_\_\_\_\_

\_\_\_\_\_  
Terry Alexander


DATED: \_\_\_\_\_

\_\_\_\_\_  
Andrew Alexander

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: March 28, 2024

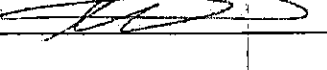
JCL LAW FIRM, A.P.C.

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Attorneys for Plaintiff and the Settlement Class Members

DATED: March 28, 2024

ZAKAY LAW GROUP, APLC

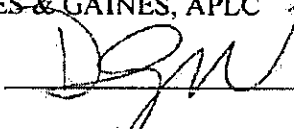
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Attorneys for Plaintiff and the Settlement Class Members

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DATED: 3/20/2024

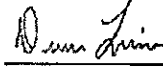
GAINES & GAINES, APLC

By: 

Attorneys for Plaintiff and the Settlement Class Members

DATED: 04/01/2024

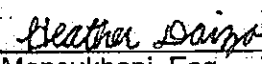
DREW LEWIS, PC

By: 

Attorneys for Plaintiff and the Settlement Class Members

DATED: 4-2-2024

GORDON REES SCULLY MANSUKHANI, LLP

By: 

Roger M. Mansukhani, Esq.

Bimali Walgampaya, Esq.

Heather T. Daiza, Esq.

Attorney for Defendants

# EXHIBIT A

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

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

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

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

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

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

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

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



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

## **2. What is this class action lawsuit about?**

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

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

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

## **3. What are the terms of the Settlement?**

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

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

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

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

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

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

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

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

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

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

#### **4. What Do I Release Under the Settlement?**

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

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

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

#### **5. How much will my payment be?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The addresses for the Parties' counsel are as follows:

**Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
5440 Morehouse Drive, Suite 3600  
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Tel.: (619) 599-8292  
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**Class Counsel:**

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Roseville, CA 95661  
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**9. When and where will the Court decide whether to approve the Settlement?**

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

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

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

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

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

**IMPORTANT:**

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

# EXHIBIT B

**JCL LAW FIRM, APC**

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

*(Additional Counsel on Next Page)*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN JOAQUIN**

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

Plaintiffs,

v.

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

Defendants.

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

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

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

FILED  
SUPERIOR COURT-STOCKTON  
2024 MAR 28 AM 11:35  
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- CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
  - 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
  - 7) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE §2802;
  - 8) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203.
  - 9) FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT CAL. LAB. CODE §§ 204 AND 210.
  - 10) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698 *et seq.*]

**DEMAND FOR A JURY TRIAL**

**GAINES & GAINES**

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Attorneys for PLAINTIFF LUIS VAZQUEZ

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

5 **THE PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **JURISDICTION AND VENUE**

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

28 ///



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

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

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

9 **B. Rest Period Violations**

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



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

3 **C. Unlawful Rounding Violations**

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

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

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

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

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

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

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

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

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

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

19 **E. Unreimbursed Business Expenses**

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

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

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

15 **F. Wage Statement Violations**

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

28 ///

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

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

24 **H. CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

22                                 **FIRST CAUSE OF ACTION**

23                                 **Unlawful Business Practices**

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

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

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

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

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

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

14           66.    By the conduct alleged herein, DEFENDANT has engaged and continues to  
15 engage in a business practice which violates California law, including but not limited to, the  
16 applicable Wage Order(s), the California Code of Regulations and the California Labor Code  
17 including Sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,  
18 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.  
19 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to  
20 constitute unfair competition, including restitution of wages wrongfully withheld.

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

26           68.    By the conduct alleged herein, DEFENDANT’s practices were deceptive and  
27 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally  
28 mandated meal and rest periods and the required amount of compensation for missed meal and  
rest periods and, due to a systematic business practice that cannot be justified, pursuant to the  
applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.

1 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,  
2 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

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

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

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

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

25 74. All the acts described herein as violations of, among other things, the Industrial  
26 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor  
27 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and  
28

1 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business  
2 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

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

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

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

19 **SECOND CAUSE OF ACTION**

20 **Failure To Pay Minimum Wages**

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

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

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

26 79. PLAINTIFFS and the other members of the CALIFORNIA CLASS bring a claim  
27 for DEFENDANT'S willful and intentional violations of the California Labor Code and the  
28

1 Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate  
2 and pay minimum wages to PLAINTIFFS and the CALIFORNIA CLASS Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **FIFTH CAUSE OF ACTION**

12 **Failure To Provide Required Rest Periods**

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

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

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

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

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

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

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

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

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

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

18 **SIXTH CAUSE OF ACTION**

19 **Failure To Provide Accurate Itemized Statements**

20 **(Cal. Lab. Code §§ 226)**

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

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

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

27 i. Gross wages earned,

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

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

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **Failure To Pay Wages When Due**

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

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

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

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

25 As used in this article:

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

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

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

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

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

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

2 **Failure To Pay Wages During Employment**

3 **(Cal. Lab. Code §§ 204 and 210)**

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

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

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

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

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

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

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

19 **TENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

1 the following amounts:

- 2 a. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred  
3 dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the  
4 initial violation and two hundred dollars (\$200) for AGGRIEVED  
5 EMPLOYEE per pay period for each subsequent violation [penalty per Labor  
6 Code Section 2699(f)(2)];
- 7 b. For violations of Labor Code Section 226(a), a civil penalty in the amount of  
8 two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for any  
9 initial violation and one thousand dollars for each subsequent violation  
10 [penalty per Labor Code Section 226.3];
- 11 c. For violations of Labor Code Sections 204, a civil penalty in the amount of  
12 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial  
13 violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for  
14 each subsequent violation [penalty per Labor Code Section 210];
- 15 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in  
16 the amount of fifty dollars (\$50) for each underpaid AGGRIEVED  
17 EMPLOYEE for the initial violation and hundred dollars (\$100) for each  
18 underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty  
19 per Labor Code Section 558];
- 20 e. For violations of Labor Code Section 2269(a), a civil penalty in the amount of  
21 two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE per violation  
22 in an initial citation and one thousand dollars (\$1,000) per AGGRIEVED  
23 EMPLOYEE for each subsequent violation [penalty per Labor Code Section  
24 226.3];
- 25 f. For violations of Labor Code Sections 1194, 1197, 1198 and 1199, a civil  
26 penalty in the amount of one hundred dollars (\$100) per AGGRIEVED  
27 EMPLOYEE per pay period for the initial violation and two hundred dollars  
28 fifty (\$250) per AGGRIEVED EMPLOYEE per pay period for each  
subsequent violation [penalty per Labor Code Section].
- g. For all provisions of the Labor Code for which civil penalty is not specifically

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

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

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1 **PRAYER FOR RELIEF**

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

4 1. On behalf of the CALIFORNIA CLASS:

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

15 2. On behalf of the CALIFORNIA CLASS:

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

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violation of Cal. Lab. Code § 226

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

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

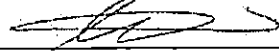
a. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: March 26, 2024

**ZAKAY LAW GROUP, APLC**

By: 

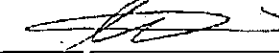
Shani O. Zakay  
Attorney for PLAINTIFF

**DEMAND FOR A JURY TRIAL**

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

DATED: March 26, 2024

**ZAKAY LAW GROUP, APLC**

By: 

Shani O. Zakay  
Attorney for PLAINTIFF