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ACRE GOURMET, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO – CIVIC CENTER COURTHOUSE**

AURELIA RAMIREZ, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

ACRE GOURMET, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CGC-19-575117

[Assigned for all purposes to the Hon.
Andrew Y.S. Cheng in Dept. 613]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: April 8, 2019

Trial Date: None Set

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and California Private Attorneys General Act of
3 2004 (PAGA) Representative Settlement (“Settlement” or “Agreement” or “Settlement
4 Agreement”) is made by and between AURELIA RAMIREZ (“Plaintiff”), individually and on
5 behalf of the Settlement Class, as defined below, on the one hand, and ACRE GOURMET,
6 INC. (“Defendant”) on the other hand (collectively, the “Parties”), in the lawsuit entitled
7 *Aurelia Ramirez v. Acre Gourmet, Inc.*, filed in the San Francisco County Superior Court, Case
8 No. CGC-19-575117 (the “Action”). This Agreement is intended by the Parties to fully,
9 finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and
10 subject to the terms and conditions of this Agreement.

11 **1. DEFINITIONS**

12 **A.** **“Action”** means *Aurelia Ramirez v. Acre Gourmet, Inc.*, San Francisco County
13 Superior Court Case No. CGC-19-575117.

14 **B.** **“Class Counsel”** means: David D. Bibiyan, Esq. of Bibiyan Law Group, P.C.
15 and Jasmin Gill, Esq. of J. Gill Law Group, P.C. The term “Class Counsel” shall be used
16 synonymously with the term “Plaintiff’s Counsel.”

17 **C.** **“Class Period”** means the period from April 8, 2015 up to and including
18 November 22, 2019.

19 **D.** **“Court”** means the Superior Court of the State of California for the County of
20 San Francisco.

21 **E.** **“Final Approval Date”** means the later of: (1) the date the Court signs an Order
22 granting final approval of this Settlement (“Final Approval”) and Judgment, (2) if there is an
23 objector, 60 days from the date the Final Approval and Judgment, or (3) to the extent any
24 appeals have been filed, the date on which they have been resolved or exhausted.

25 **F.** **“Defendant”** means: Acre Gourmet, Inc.

26 **G.** **“Enhancement Payment/Service Award”** means monetary amounts to be paid
27 to Plaintiff, of up to Seven Thousand Five Hundred Dollars (\$7,500), which subject to Court
28 approval, will be paid out of the Gross Settlement Amount.

1 **H. “Employer Taxes”** means employer-funded taxes and contributions imposed on
2 the wage portions of the Individual Settlement Shares under the Federal Insurance
3 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
4 and contributions required of employers, such as for unemployment insurance.

5 **I. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Two
6 Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) or, alternatively, a greater
7 amount to be determined in accordance with Paragraph 17 of this Agreement, which shall be
8 paid by Defendant, from which all payments for the Individual Settlement Payments to
9 Participating Class Members and the Court-approved amounts for attorneys’ fees and
10 reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration
11 Costs, Enhancement Payment/Service Award, and the PAGA Payment shall be paid. It
12 expressly excludes Employer Taxes.

13 **J. “Individual Settlement Payment”** means a payment to a Participating Class
14 Member of his or her net share of the Net Settlement Amount (which share and payment shall
15 be determined by the calculations provided in this Agreement).

16 **K. “Individual Settlement Share”** means the gross amount of the Net Settlement
17 Amount that a Settlement Class Member is eligible to receive if he or she does not submit a
18 timely and valid Request for Exclusion based on the number of Workweeks that he or she
19 worked as a Settlement Class Member during the Class Period.

20 **L. “LWDA Payment”** means the payment to the State of California Labor and
21 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the
22 total amount allocated toward penalties under the California Private Attorneys General Act of
23 2004 (“PAGA”), all of which is to be paid from the Gross Settlement Amount. The Parties have
24 agreed that Five Thousand Dollars and Zero Cents (\$5,000.00) shall be allocated toward PAGA
25 penalties (“PAGA Payment”), of which Three Thousand Seven Hundred Fifty Dollars and Zero
26 Cents (\$3,750.00) will be paid to the LWDA and One Thousand Two Hundred Fifty Dollars
27 and Zero Cents (\$1,250.00) will remain a part of the Net Settlement Amount for payment to
28 Participating Class Members on a *pro rata* basis.

1 **M. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
2 that is available for distribution to the Participating Class Members after deductions for the
3 Court-approved allocations for Settlement Administration Costs, Enhancement
4 Payment/Service Award to the Named Plaintiff, an award of attorneys’ fees, and
5 reimbursement of litigation costs and expenses to Class Counsel, and the LWDA Payment.

6 **N. “Operative Complaint”** or **“Complaint”** means, collectively, the First
7 Amended Complaint to be filed with the Court in the Action as set forth in this Agreement.

8 **O. “PAGA Period”** means the period from April 8, 2018 up to and including
9 November 22, 2019.

10 **P. “Participating Class Members”** means all Settlement Class Members who do
11 not submit a timely and valid Request for Exclusion.

12 **Q. “Plaintiff”** or **“Named Plaintiff”** means Aurelia Ramirez. The terms
13 “Plaintiff” and “Named Plaintiff” shall be used synonymously with the term “Class
14 Representative.”

15 **R. “Preliminary Approval Date”** means the date on which the Court enters an
16 Order granting preliminary approval of the Settlement.

17 **S. “Response Deadline”** means the deadline for Settlement Class Members to mail
18 or fax any Requests for Exclusion, objections, or Workweeks Disputes to the Settlement
19 Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first
20 mailed in English and Spanish by the Settlement Administrator (or, if the Class Notice is re-
21 mailed, sixty (60) calendar days from said date). The date of the postmark or fax-stamp shall be
22 the exclusive means for determining whether a Request for Exclusion, objection, or
23 Workweeks Dispute was submitted by the Response Deadline.

24 **T. “Request for Exclusion”** means a written request to be excluded from the
25 Settlement Class pursuant to Section 9.C below.

26 **U. “Settlement Administration Costs”** means all costs incurred by the Settlement
27 Administrator in administration of the Settlement, including, but not limited to, translating the
28 Class Notice in Spanish, the distribution of the Class Notice to the Settlement Class in English

1 and Spanish, providing weekly reports of Class Notices mailed, redelivered, as well as opt-outs
2 and objections received, calculating Individual Settlement Shares and Individual Settlement
3 Payments and associated taxes and withholdings, providing declarations, generating Individual
4 Settlement Payment checks and related tax reporting forms, doing administrative work related
5 to unclaimed checks, transmitting payment to Class Counsel for the Court-approved amounts
6 for attorneys' fees and reimbursement of litigation costs and expenses, to Plaintiff for her
7 Enhancement Payment/Service Award, and to the LWDA for the LWDA Payment, posting a
8 notice of final judgment online at its website, and any other actions of the Settlement
9 Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The
10 Settlement Administration Costs are estimated not to exceed \$10,000. If the actual amount of
11 the Settlement Administration Costs is less than \$10,000, the difference between \$10,000 and
12 the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If it
13 is more than \$10,000, the additional amount required to cover the Settlement Administration
14 Costs shall be paid from the Gross Settlement Amount.

15 **V. "Settlement Administrator"** means Phoenix Settlement Administrators, which
16 the Parties have agreed will be responsible for the administration of the Settlement including,
17 without limitation, translating the Class Notice in Spanish, the distribution of the Individual
18 Settlement Payments to be made by Defendant from the Gross Settlement Amount and related
19 matters under this Agreement.

20 **W. "Settlement Class" or "Settlement Class Members"** means all current and
21 former non-exempt, hourly-paid employees, who worked in California for Defendant at any
22 time during the Class Period, except for: (1) those persons currently or formerly employed by
23 Defendant at its "Bay School" location (except for workweeks during which they worked at
24 least one shift at one of the four locations that are included in the Class); (2) those persons
25 currently or formerly employed by Defendant as "Head Chefs," and (3) clerical employees
26 currently or formerly employed by Defendant at its office.

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1 **X.** “**Workweeks**” means the number of weeks that a Settlement Class Member
2 worked at least one shift for Defendant during the Class Period at any of its locations, except
3 for its “Bay School” location.

4 **2. BACKGROUND**

5 **A.** In the Action, it is alleged that Defendant violated provisions of the California
6 Labor Code, the California Business and Professions Code sections 17200, *et seq.* and PAGA
7 based on the alleged Labor Code violations.

8 Plaintiff alleges that, during the Class Period, with respect to Plaintiff and the
9 Settlement Class Members, Defendant, *inter alia*: failed to pay any and all of its non-exempt
10 employees overtime wages at the correct overtime rate because it did not calculate
11 nondiscretionary bonuses into the rate of pay for the purpose of calculating overtime; failed to
12 pay minimum wages and overtime wages due to the detrimental rounding of employee work
13 hours; and failed to pay for time donning and doffing uniforms. Moreover, Plaintiff alleges
14 that Defendant failed to provide compliant meal and rest periods, or meal premium payments in
15 lieu thereof; failed to issue compliant and accurate itemized wage statements; and failed to
16 timely pay all wages due and owing at the time of termination or resignation. Plaintiff further
17 alleges that Defendant engaged in unfair competition based on the alleged Labor Code
18 violations. Plaintiff therein investigated these an exchange of informal discovery that included,
19 without limitation, exchange of all pertinent policies in effect, a sampling of time and payroll
20 records for approximately half of the Settlement Class Members, hire dates, termination dates,
21 and rates of pay for all class members, and other documents and information requested by
22 Plaintiff, which yielded great insight to Plaintiff regarding her chances of certification in
23 connection with her claims, the merits of her claims, and Defendant’s damages exposure.

24 **B.** Plaintiff and Class Counsel therein engaged in good faith, arm’s-length
25 negotiations with Defendant concerning possible resolution of the Action. Specifically, on
26 November 22, 2019, the Parties participated in a mediation before mediator Mark Rudy, Esq., a
27 well-regarded mediator experienced in mediating complex labor and employment matters. With
28 the aid of the mediator’s evaluation, the Parties reached the Settlement to resolve the Action.

1 C. Class Counsel have conducted significant investigation of the law and facts
2 relating to the claims asserted in the Action and have concluded that that the Settlement set
3 forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class,
4 taking into account the sharply contested issues involved, the expense and time necessary to
5 litigate the Action through trial and any appeals, the risks and costs of further litigation of the
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, and the
7 substantial benefits to be received by the Settlement Class Members.

8 D. Defendant has concluded that, because of the substantial expense of defending
9 against the Action, the length of time necessary to resolve the issues presented herein, the
10 inconvenience involved, and the concomitant disruption to its business operations, it is in its
11 best interest to accept the terms of this Agreement. Defendant denies each of the allegations
12 and claims asserted against it in the Action. However, Defendant nevertheless desires to settle
13 the Action for the purpose of avoiding the burden, expense and uncertainty of continuing
14 litigation and for the purpose of putting to rest the controversies engendered by the Action.

15 E. This Agreement is intended to and does effectuate the full, final, and complete
16 resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those
17 Settlement Class Members who submit a timely and valid Request for Exclusion.

18 **3. JURISDICTION**

19 The Court has jurisdiction over the Parties and the subject matter of this Action. The
20 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
21 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
22 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the
23 judgment pursuant to California Rules of Court, rule 3.769, subdivision (h).

24 **4. STIPULATION OF CLASS CERTIFICATION**

25 The Parties stipulate to the certification of the Settlement Class under this Agreement
26 for purposes of settlement only.

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1 **5. MOTION FOR PRELIMINARY APPROVAL**

2 Plaintiff will move for an order granting preliminary approval of the Settlement,
3 approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class
4 Notice”) attached hereto as **EXHIBIT A**, conditionally certifying the Settlement Class for
5 settlement purposes only, and approving the deadlines proposed by the Parties for the
6 submission of Requests for Exclusion, Workweeks Disputes, and objections, the papers in
7 support of Final Approval of the Settlement, and any responses to Objections or opposition
8 papers to the Motion for Final Approval.

9 **6. FIRST AMENDED COMPLAINT**

10 Prior to filing the Motion for Preliminary Approval, Defendant agrees to enter into a stipulation
11 for Plaintiff to file a First Amended Complaint and requesting a court order allowing for same.
12 The Parties intend Plaintiff to file with the Court the Proposed First Amended Complaint
13 attached hereto as **EXHIBIT B**, which amends Plaintiff’s original Complaint to add claims for
14 civil penalties based on the Labor Code violations asserted in the Complaint under Labor Code
15 sections 226.3, 558, 1197.1 and 2699. Defendant will have no obligation to file an Answer to
16 the First Amended Complaint, although Defendant denies all allegations therein consistent with
17 this Agreement. The First Amended Complaint, when filed, shall be the operative complaint.

18 **7. STATEMENT OF NO ADMISSION**

19 Defendant denies any liability to Plaintiff and the Settlement Class with respect to any
20 claims or allegations asserted in the Action. In the event that this Agreement is not approved
21 by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable,
22 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights
23 or remedies, or defenses in the Action and Defendant will not be deemed to have waived,
24 limited, or affected in any way any of its objections or defenses in the Action. The Parties shall
25 be restored to their respective positions in the Action prior to the entry of this Settlement.

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1 **8. RELEASE OF CLAIMS**

2 **A. Release as to All Participating Class Members.**

3 Upon the Final Approval Date and payment by Defendant of the Gross Settlement
4 Amount to the Settlement Administrator, Plaintiff and Participating Class Members waive,
5 release, discharge, and promise never to assert in any forum against Defendant, its parents,
6 subsidiaries, predecessors or successors in interest, or the officers, directors, shareholders, or
7 employees, of any of them, all claims that are asserted, or could have been asserted, against
8 Defendant based on the factual allegations in the proposed First Amended Complaint attached
9 as Exhibit B, arising or accruing during the Class Period, including but not limited, to, that
10 Defendant, (a) failed to pay overtime wages; (b) failed to pay minimum wages or to pay wages
11 for all hours worked; (c) failed to provide compliant meal and rest periods and pay associated
12 premium pay; (d) failed to timely pay all wages upon termination; (e) failed to timely pay
13 wages during employment; (f) failed to provide legally-compliant or accurate wage statements;
14 (g) failed to provide employee expenses or reimbursements incidental to employment; (h)
15 unlawfully manipulated time clock and time sheets to deduct from hours work or avoid meal
16 period violations; (i) failed to pay wage for employee time spent “donning” and “doffing”; (j)
17 failed to correctly pay overtime wages by failing to include bonuses in calculating the overtime
18 premium rate, (k) by engaging in any or all of the aforementioned conduct violated, is liable
19 under the California Labor Code, including but not limited to, Sections 200, 201, 202, 203, 226,
20 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 2802, or is recoverable under Cal Code
21 tit. 5 section 110959 (California Wage Order 5-2001) or California Business & Professions
22 Code § 17200 et seq. (in connection with the Labor Code violations asserted or that could have
23 been asserted based on the factual allegations in the Operative Pleading), California Civil Code
24 § 3278, and California Code of Civil Procedure § 1021.5; and (l) for individuals employed
25 during the PAGA Period, all asserted PAGA claims arising out of the Labor Code violations
26 alleged in the Operative Pleadings under California Labor Code § 2698 et seq. (hereinafter
27 collectively referred to as the “Released Claims”).

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1 **B. General Release.**

2 In addition to the Released Claims, Plaintiff makes the additional following General
3 Release: upon Final Approval, Plaintiff releases Defendant, and its parents, subsidiaries,
4 predecessors or successors in interest, officers, directors, shareholders, employees, attorneys,
5 agents, assigns, insurers, and re-insurers of any of them, from all claims, demands, rights,
6 liabilities and causes of action of every nature and description whatsoever, asserted in the
7 Action and arising from her employment through and including the Final Approval Date
8 against Defendant and its officers, directors, supervisors, managers, affiliates, subsidiaries,
9 parents, and/or managing agents, including a waiver of Civil Code §1542. The General Release
10 includes any unknown claims that Plaintiff does not know or suspect to exist in her favor at the
11 time of the General Release, which, if known by her, might have affected her settlement with,
12 and release of, the Released Parties or might have affected their decision not to object to this
13 Settlement or the General Release. With respect to the General Release, Plaintiff stipulates and
14 agrees that, upon Final Approval of the herein Settlement, she shall be deemed to have, and by
15 operation of the final judgment shall have, expressly waived and relinquished, to the fullest
16 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California
17 Civil Code, or any other similar provision under federal or state law as to the generally released
18 claims, which provides:

19 **A general release does not extend to claims which the**
20 **creditor does not know or suspect to exist in his or her favor**
21 **at the time of executing the release, which if known by him**
22 **or her must have materially affected his or her settlement**
23 **with the debtor.**

24 Plaintiff may hereafter discover facts in addition to or different from those she now knows or
25 believes to be true with respect to the subject matter of the General Release, but she shall be
26 deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever
27 settled and released any and all of the claims released pursuant to the General Release whether
28 known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist,

1 or heretofore have existed upon any theory of law or equity now existing or coming into
2 existence in the future, including, but not limited to, conduct that is negligent, intentional, with
3 or without malice, or a breach of any duty, law or rule, without regard to the subsequent
4 discovery or existence of such different or additional facts.

5 **9. SETTLEMENT ADMINISTRATOR**

6 Plaintiff and Defendant, through their respective counsel, have selected Phoenix
7 Settlement Administrators to administer the Settlement, which includes but is not limited to
8 translating the Class Notice in Spanish, distributing and responding to inquiries about the Class
9 Notice, providing weekly status reports to counsel for the Parties, posting a notice of final
10 judgment online at its website, and calculating all amounts to be paid from the Gross
11 Settlement Amount. Charges and expenses of the Settlement Administrator, currently
12 estimated to be \$5,000.00, will be paid from the Gross Settlement Amount. If the actual
13 Settlement Administrator fees are less than \$5,000.00, the difference will remain a part of the
14 Net Settlement Amount. If the actual Settlement Administrator fees are more than \$5,000, the
15 additional amount required to cover the Settlement Administration Costs shall be paid from the
16 Gross Settlement Amount.

17 **10. NOTICE, WORKWEEKS DISPUTE, OBJECTION, AND EXCLUSION**
18 **PROCESS**

19 **A. Notice to the Settlement Class Members.**

20 (1) Within (15) calendar days after the Preliminary Approval Date,
21 Defendant's Counsel shall provide the Settlement Administrator with information with respect
22 to each Settlement Class Member, including his or her: (1) name, last known address(es), and
23 last known telephone number(s) currently in Defendant's possession, custody, or control; (2)
24 Social Security Number; and (3) number of Workweeks ("Class List"). The Settlement
25 Administrator shall perform an address search using the United States Postal Service National
26 Change of Address ("NCOA") database and update the addresses contained on the Class List
27 with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class
28 List from Defendant, the Settlement Administrator shall mail the Class Notice in English and

1 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most
2 current mailing address information available. The Settlement Administrator shall maintain a
3 list with names and all addresses to which notice was given, and digital copies of all the
4 Settlement Administrator's records evidencing the giving of notice to any Settlement Class
5 Member, for at least four (4) years from the Final Approval Date.

6 (2) The Class Notice will set forth:

- 7 (a) A statement that this is a settlement of a contested action and that
8 by the Settlement Defendant is not admitting liability;
- 9 (b) the Settlement Class Member's estimated payment and the basis
10 for it, including the verified number of workweeks;
- 11 (c) the information required by California Rules of Court, rule 3.766,
12 subdivision (d);
- 13 (d) the material terms of the Settlement;
- 14 (e) the proposed Settlement Administration Costs;
- 15 (f) the definition of the Settlement Class;
- 16 (g) a statement that the Court has preliminarily approved the
17 Settlement;
- 18 (h) how the Settlement Class Member can obtain additional
19 information, including contact information for Class Counsel;
- 20 (i) information regarding opt-out and objection procedures;
- 21 (j) the date and location of the Final Approval Hearing; and
- 22 (k) that the Settlement Class Member must notify the Settlement
23 Administrator no later than the Response Deadline if the
24 Settlement Class Member disputes the accuracy of the number of
25 Workweeks as set forth on his or her Class Notice ("Workweeks
26 Dispute"). If a Settlement Class Member fails to timely dispute
27 the number of Workweeks attributed to him or her in conformity
28 with the instructions in the Class Notice, then he or she shall be

1 deemed to have waived any objection to its accuracy and any
2 claim to any additional settlement payment based on different
3 data.

4 (3) If a Class Notice from the initial notice mailing is returned as
5 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
6 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
7 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
8 Member by phone (if the Class List provided by Defendant includes a last known telephone
9 number for the Settlement Class Member), and (2) undertaking skip tracing. If the Settlement
10 Administrator is successful in obtaining a new address, it will promptly re-mail the Class
11 Notice to the Settlement Class Member. Further, any Class Notices that are returned to the
12 Settlement Administrator with a forwarding address before the Response Deadline shall be
13 promptly re-mailed to the forwarding address affixed thereto. Class members who are re-
14 mailed a Class Notice shall have an additional fifteen (15) calendar days to submit a Request
15 for Exclusion or objection.

16 (4) No later than seven (7) calendar days from the Response Deadline, the
17 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
18 completion of the notice process, including the number of attempts to obtain valid mailing
19 addresses for and re-sending of any returned Class Notices, as well as the number of opt-outs
20 and objections received by the Settlement Administrator.

21 **B. Objections.**

22 Only Settlement Class Members who do not opt out of the Settlement may object to the
23 Settlement. In order for any Settlement Class Member to object to this Settlement, or any term
24 of it, he or she must do so by mailing or faxing a written objection to the Settlement
25 Administrator at the address or facsimile number provided on the Class Notice no later than the
26 Response Deadline. The Settlement Administrator shall email a copy of the objection forthwith
27 to Class Counsel and Defendant's counsel. Class Counsel shall lodge a copy of the objection
28 with the Court. The date of the postmark or fax-stamp shall be the exclusive means for

1 determining whether an objection has been timely submitted. The objection shall set forth in
2 writing: (1) the objector's name and address, and (2) the reason(s) for the objection, along with
3 whatever legal authority, if any, the objector asserts supports the objection. Nevertheless, Class
4 Members who fail to object in the specific and technical manner specified above may still be
5 heard by the Court at the Final Approval Hearing. If a Settlement Class Member objects to this
6 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if
7 the Court approves this Agreement, the Settlement Class Member will be bound by the terms of
8 the Settlement in the same way and to the same extent as a Settlement Class Member who does
9 not object. The date of mailing of the Class Notice to the objecting Settlement Class Member
10 shall be conclusively determined according to the records of the Settlement Administrator.

11 **C. Requesting Exclusion.**

12 Any Settlement Class Member may request exclusion from (i.e., "opt out" of) the
13 Settlement by mailing or faxing a written request to be excluded from the Settlement ("Request
14 for Exclusion") to the Settlement Administrator, postmarked or fax-stamped on or before the
15 Response Deadline. To be valid, a Request for Exclusion must include the Class Member's
16 name and signature and the following statement: "Please exclude me from the Settlement Class
17 in the *Aurelia Ramirez v. Acre Gourmet, Inc.* matter" or a statement of similar meaning. The
18 Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
19 Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it
20 receives, to the Court, in its declaration to be provided in advance of the Final Approval
21 Hearing. Any Settlement Class Member who requests exclusion using this procedure will not
22 be entitled to receive any payment from the Settlement and will not be bound by the Settlement
23 Agreement or have any right to object to, appeal, or comment on the Settlement. Any
24 Settlement Class Member who does not opt out of the Settlement by submitting a timely and
25 valid Request for Exclusion will be bound by all terms of the Settlement, including those
26 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
27 Final Approval of the Settlement is granted.

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1 **D. Disputes Regarding Settlement Class Members’ Workweeks Data.**

2 Each Settlement Class Member may dispute the number of Workweeks contained on his
3 or her Class Notice (“Workweeks Dispute”). Any such disputes must be mailed or faxed to the
4 Settlement Administrator by the Settlement Class Member, postmarked or fax-stamped on or
5 before the Response Deadline. The Settlement Administrator shall immediately provide copies
6 of all disputes to Class Counsel and counsel for Defendant and shall immediately attempt to
7 resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance
8 of Defendant and Class Counsel. If Defendant and the Settlement Class Member(s) are unable
9 to resolve the workweek dispute, the Settlement Administrator will evaluate the evidence
10 submitted by the Class Member and will make the final decision as to the number of eligible
11 Workweeks that should be applied and/or the Individual Settlement Payment to which the Class
12 Member may be entitled. All such disputes are to be resolved not later than fourteen (14)
13 calendar days after the Response Deadline.

14 **11. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
15 **MEMBERS**

16 Individual Settlement Payments will be calculated and distributed to Participating
17 Class Members from the Net Settlement Amount on a *pro rata* basis, based on the
18 Participating Class Members’ respective number of Workweeks during the Class Period. To
19 the extent some of the class members already received partial compensation for their claims,
20 those amounts shall be deducted from the amount initially determined to be owed to those
21 class members. Specific calculations of the Individual Settlement Payments will be made as
22 follows:

23 **A.** The Settlement Administrator will determine the total number of Workweeks
24 worked by each Settlement Class Member, as well as the aggregate number of Workweeks
25 worked by all Settlement Class Members.

26 **B.** To determine each Settlement Class Member’s Individual Settlement Share,
27 the Settlement Administrator will use the following formula: Individual Settlement Share =
28 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

1 C. To determine each Participating Class Member’s Individual Settlement Share,
2 the Settlement Administrator will determine the aggregate number of Workweeks worked by
3 all Participating Class Members during the Class Period (“Participating Class Workweeks”)
4 and use the following formula: Individual Settlement Share = (Participating Class Member’s
5 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

6 D. This net amount is to be paid out to Participating Class Members by way of
7 check and is referred to as “Individual Settlement Payment(s).”

8 **12. DISTRIBUTION OF PAYMENTS**

9 **A. Distribution of Individual Settlement Payments.**

10 Settlement Class Members who do not submit a timely and valid Request for
11 Exclusion (i.e., Participating Class Members) will receive an Individual Settlement Payment.
12 Individual Settlement Payment checks shall remain valid and negotiable for one hundred and
13 eighty (180) calendar days after the date of their issuance. Within ten (10) calendar days after
14 the expiration of the 180-day period, the Settlement Administrator will cancel all Individual
15 Settlement Payment checks that have not been cashed or deposited within the 180-day period,
16 and tender all funds associated with such checks plus any accrued interest that has not
17 otherwise been distributed (together, “Unused Funds”), shall be paid to the California State
18 Controller, with the identity of the Participating Class Member(s) to whom the funds belong,
19 to be held for the Participating Class Member(s) per the California Unclaimed Property Law,
20 in the interest of justice. The money paid to the State Controller will remain the Participating
21 Class Member(s) property. This will allow Participating Class Member(s) who did not cash
22 their checks to collect their Individual Settlement Payments at any time in the future.
23 Therefore, there will be no unpaid residue or unclaimed or abandoned class member funds
24 and the California Code of Civil Procedure section 384 shall not apply.

25 **B. Funding of Settlement.**

26 Defendant shall, within ten (10) days after the Final Order and Judgment following a
27 Final Fairness and Approval hearing, make payment to the Settlement Administrator pursuant
28 to Internal Revenue Code section 1.468B-1 for deposit in an interest bearing qualified

1 settlement account (“QSF”) with an FDIC insured banking institution, for distribution in
2 accordance with this Agreement and the Court’s orders and subject to the conditions described
3 herein. Individual Settlement Payments for Class Members shall be paid exclusively from the
4 QSF, pursuant to the settlement formula set forth herein, and shall be mailed within seven (7)
5 calendar days after Defendant delivers the Gross Settlement Amount as required by this
6 Stipulation, as well as any additional Employer Taxes necessary to effectuate the settlement, to
7 the Settlement Administrator. In addition to forwarding the Employer Taxes as necessary from
8 the QSF to the proper governmental authorities, the Settlement Administrator shall pay from
9 the QSF: (1) the Service Award to the Named Plaintiff, as specified in this Agreement and
10 Approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid to Class Counsel, as
11 specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs;
12 and (4) the amount allocated to PAGA penalties to be paid to the LWDA. The balance
13 remaining shall constitute the Net Settlement Amount from which Individual Settlement
14 Payments shall be made to Participating Class Members, less applicable taxes and
15 withholdings. All interest accrued shall be for the benefit of the class members and distributed
16 on a *pro-rata* basis.

17 **C. Time for Distribution.**

18 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
19 Defendant, the Settlement Administrator shall distribute all payments due under the Settlement,
20 including the Individual Settlement Payments to Participating Class Members, as well as the
21 Court-approved payments for the Enhancement Payment/Service Award to Plaintiff, attorneys’
22 fees and litigation costs and expenses to Class Counsel, Administration Costs to the Settlement
23 Administrator, and the LWDA Payment. If preliminary and final approval of the Parties’
24 Settlement is not granted by the Court for any reason, the Settlement Administrator shall, upon
25 request by Defendant, transfer any and all funds in the QSF back to Defendant with all accrued
26 interest.

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1 **13. ATTORNEYS' FEES AND LITIGATION COSTS**

2 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
3 fees not in excess of Eighty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-
4 Three Cents (\$83,333.33), or one third of the Gross Settlement Amount. Class Counsel shall
5 further apply for, and Defendant shall not oppose, an application or motion by Class Counsel
6 for reimbursement of costs associated with Class Counsel's prosecution of this matter. Awards
7 of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and
8 future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the
9 settlement in the Action. The "future" aspect of the amounts stated herein includes, without
10 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
11 There will be no additional charge of any kind to either the Settlement Class Members or
12 request for additional consideration from Defendant for such work. Should the Court approve
13 attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts
14 provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement
15 Amount.

16 **14. ENHANCEMENT PAYMENT/SERVICE AWARD TO PLAINTIFF**

17 Plaintiff shall seek, and Defendant shall not oppose, an Enhancement Payment/Service
18 Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents
19 (\$7,500.00), for her participation in, her time and effort in bringing and prosecuting the Action
20 and in exchange for the General Release. Any Enhancement Payment/Service Award awarded
21 to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on IRS Form
22 1099. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this
23 payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or
24 interest arising as a result of the payment. This payment shall be in addition to Plaintiff's share
25 of the Settlement Amount as a Participating Settlement Class Member. If the Court approves
26 an Enhancement Payment to Plaintiff in less than the amounts sought herein, then the
27 unapproved portion(s) shall be a part of the Net Settlement Amount.

28 / / /

1 **15. TAXATION AND ALLOCATION**

2 A. Each Individual Settlement Share shall be allocated as follows: 33% as wages
3 (to be reported on an IRS Form W2); and 67% as interest and penalties (to be reported on an
4 IRS Form 1099). The Parties agree that the employee’s share of taxes and withholdings with
5 respect to the wage-portion of the Individual Settlement Share will be withheld from the
6 Individual Settlement Share in order to yield the Individual Settlement Payment. The amount
7 of federal income tax withholding will be based upon a flat withholding rate for supplemental
8 wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
9 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
10 local withholding codes or regulations.

11 B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
12 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
13 “Code”) and consistent with this Agreement. If the Code, the regulations promulgated
14 thereunder, or other applicable tax law, is changed after the date of this Agreement, the
15 processes set forth in this Section may be modified in a manner to bring Defendant into
16 compliance with any such changes.

17 C. All Employer Taxes shall be paid by Defendant separate, apart and above from
18 the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of
19 payroll taxes.

20 **16. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION**

21 The Parties agree to allocate Five Thousand Dollars and Zero Cents (\$5,000) of the
22 Gross Settlement Amount towards penalties recoverable pursuant to the Private Attorneys’
23 General Act, California Labor Code sections 2698, *et seq.* (“the PAGA Payment”). Pursuant to
24 the PAGA, seventy-five percent (75%) of the PAGA Payment (\$3,750) will be paid to the
25 LWDA, and twenty-five percent (25%) of the PAGA Payment (\$1,250) will remain a part of
26 the Net Settlement Amount to be distributed to Participating Class Members on a *pro rata* basis
27 based upon their respective Workweeks.

28 / / /

1 **17. COURT APPROVAL**

2 This Agreement is contingent upon an order by the Court granting Final Approval of the
3 Settlement. In the event it becomes impossible to secure approval of the Settlement, the Parties
4 shall be restored to their respective positions in the Action prior to entry of this Settlement.

5 **18. INCREASE IN WORKWEEKS**

6 Defendant represents that there are no more than 3,000 workweeks during the period
7 from April 8, 2015 through November 22, 2019. In the event the number of workweeks
8 increases by more than 10% or 300 workweeks, then the Gross Settlement Amount shall be
9 increased proportionally by the workweeks in excess of 3,000, multiplied by the workweek
10 value. For example, should there be 5,000 workweeks in the Class Period, and the actual
11 workweek value is \$10.00 per workweek, Defendant would have to increase the Gross
12 Settlement Amount by \$20,000.00 (5,000 workweeks - 3,000 workweeks = 2,000 workweeks
13 x \$10.00/workweek).

14 **19. MISCELLANEOUS PROVISIONS**

15 **A. Interpretation of the Agreement.**

16 This Agreement constitutes the entire agreement between Plaintiff and Defendant with
17 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
18 executed in reliance upon any other written or oral representations or terms, and no such
19 extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In
20 entering into this Agreement, the Parties agree that this Agreement is to be construed according
21 to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will
22 be interpreted and enforced under the laws of the State of California, both in its procedural and
23 substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of
24 or relating to the Agreement, or the subject matter hereof, will be resolved solely and
25 exclusively in the Superior Court of the State of California for the County of San Francisco,
26 and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over it
27 solely in connection therewith. Plaintiff, on behalf of herself and on behalf of the Settlement
28 Class, and Defendant, participated in the negotiation and drafting of this Agreement and had

1 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
2 nor Defendant may claim that any ambiguity in this Agreement should be construed against the
3 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
4 approved by the Court.

5 **B. Further Cooperation.**

6 Plaintiff, Defendant, and their respective attorneys shall proceed diligently to prepare
7 and execute all documents, to seek the necessary approvals from the Court, and to do all things
8 reasonably necessary to consummate the Settlement as expeditiously as possible.

9 **C. Counterparts.**

10 The Agreement may be executed in one or more actual or non-original counterparts, all
11 of which will be considered one and the same instrument and all of which will be considered
12 duplicate originals.

13 **D. Authority.**

14 Each individual signing below warrants that he or she has the authority to execute this
15 Agreement on behalf of the party for whom or which that individual signs.

16 **E. No Third-Party Beneficiaries.**

17 Plaintiff, Participating Class Members, Class Counsel, and Defendant are direct
18 beneficiaries of this Agreement, but there are no third-party beneficiaries.

19 **F. Force Majeure.**

20 The failure of any party to perform any of its obligations hereunder shall not subject
21 such party to any liability or remedy for damages, or otherwise, where such failure is
22 occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other natural
23 disasters, explosions, floods, wars, interruptions or delays in transportation, power outages,
24 labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions,
25 rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any
26 other similar or different circumstances or causes beyond the reasonable control of such party.

27 / / /

28 / / /

1 **C. Deadlines Falling on Weekends or Holidays.**


2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal holiday, that deadline shall be continued until the following business day.

4 **H. Severability.**

5 In the event that one or more of the provisions contained in this Agreement shall for any
6 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
7 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
8 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
9 as if such invalid, illegal, or unenforceable provision had never been included in this
10 Agreement.

11 **IT IS SO AGREED:**

12 Dated: 02-10, 2020

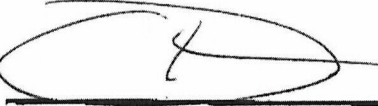

AURELIA RAMIREZ
Plaintiff and Class Representative

15 Dated: 2/26/, 2020


ACRE GOURMET, INC.
Defendant
By: BRITT GALLER
Printed Name of Authorized Signatory:
Its: President
Position of Authorized Signatory

20 **AGREED AS TO FORM:**

21 Dated: 2/11/, 2020


DAVID BIBIYAN
Bibiyan Law Group, P.C.
Attorneys for Plaintiff, Aurelia Ramirez

24 Dated: 2/20, 2020

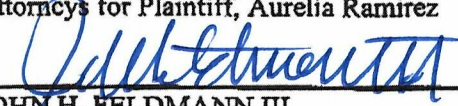

JOHN H. FELDMANN III
Cozen O'Connor
Attorneys for Defendant, Acre Gourmet, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

[AURELIA RAMIREZ V. ACRE GOURMET, INC., CASE NO. CGC-19-575117 (“THE LAWSUIT”)]

You are not being sued. This notice affects your rights. Please read it carefully.

You are receiving this notice because you have been identified as a “Class Member” because you worked for Acre Gourmet, Inc. between April 8, 2015 and November 22, 2019 (the “Class Period”). Therefore, you may be entitled to money from a class action settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you are a Class Member, you are automatically included in the Settlement and do not need to take any further action to receive a payment. The attached Explanation Form shows your estimated settlement share.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

If you do not want to receive any money under the settlement or be bound by the terms of the settlement in this Lawsuit, you must submit a written Request for Exclusion no later than [45 days after mailing].

What is this case about?

Aurelia Ramirez (“Plaintiff”) is a former employee of Acre Gourmet, Inc. (“Defendant”). Plaintiff sued Defendant for, among others, violations of the California Labor Code, the California Business & Professions Code section 17200, *et seq.* and the Labor Code Private Attorneys’ General Act (“PAGA”) based on the alleged Labor Code violations. The Lawsuit was brought on behalf of all non-exempt employees who worked for Defendant at any time during the Class Period. The parties have agreed that the settlement class shall include all current and former non-exempt, hourly paid employees who worked in California for Defendant at any time during the Class Period, except for: (1) those persons currently or formerly employed by Defendant at its “Bay School” location (unless they worked at least one shift at one of Defendant’s other locations during the Class Period); (2) those persons currently or formerly employed by Defendant as “Head Chefs”; and (3) clerical employees currently or formerly employed by Defendant at its office (the “Settlement Class”).

In the Lawsuit, Plaintiff alleged that Defendant did not pay all overtime wages due, did not pay all minimum wages due, failed to authorize and permit all meal periods due and associated premium pay, failed to authorize and permit all rest periods due and associated premium pay, failed to timely pay wages due to terminated or separated employees, failed to provide accurate itemized wage statements, violated the unfair competition provisions of California Business & Professions Code Section 17200, *et. seq.*, and that Defendant owes penalties to some members of the Settlement Class pursuant to Labor Code section 2698, *et seq.*

Defendant has denied, and continues to deny, the factual and legal allegations and claims asserted against it in Plaintiff’s Lawsuit. By agreeing to settle, Defendant is not admitting liability on any of the allegations or claims in the case, nor is it admitting that the case can or should proceed as a class action. However, Defendant has agreed to settle the case solely for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Lawsuit.

Plaintiff is represented by David D. Bibiyan of Bibiyan Law Group, P.C. and Jasmin K. Gill of J. Gill Law Group, P.C. (“Class Counsel”). While Class Counsel believes that the claims alleged in this Lawsuit have merit, Class Counsel also recognizes that the risks and costs of further litigation justify settlement of the Lawsuit. Therefore, Class Counsel believes the proposed settlement is fair, adequate, reasonable, and in the best interests of the purported class members.

If the settlement described in this Notice fails for any reason, Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights, or remedies, or defenses in the Lawsuit and Defendant will not be deemed to have waived, limited, or affected in any way of its objections or defenses in the Lawsuit. Further, the parties would be restored to their respective positions in the Lawsuit.

There was a hearing at 9:00 a.m. on May 1, 2020, in the Superior Court of California, San Francisco County, Case No. CGC-19-575117. At that hearing, the Court preliminarily approved the settlement and directed that you receive this notice.

What are the terms of the Settlement?

A. Settlement Amount

The parties have agreed to settle the Lawsuit and related class claims for \$250,000.00. This amount includes: (1) individual settlement payments to Class Members; (2) an award of attorneys' fees to be requested from the Court, not to exceed \$83,333.33 or one third of the Gross Settlement Amount and actual costs incurred by Class Counsel and Plaintiff in prosecuting the Lawsuit, which Class Counsel estimates to be less than \$20,000; (3) a class representative enhancement payment/service award to be requested from the Court, in an amount of up to \$7,500; (4) claims administration costs currently estimated at \$5,000.00; and (5) \$5,000.00 in PAGA penalties of which 75% or \$3,750.00 will be paid to the California Labor and Workforce Development Agency and 25% or \$1,250.00 to participating class members on a *pro rata* basis based upon their respective number of workweeks worked. After deducting Class Counsel's attorneys' fees and costs, the class representative's enhancement payment/service award, claims administration Costs, and the payment to the California Labor and Workforce Development Agency, a total of approximately **\$130,666.67** will be paid to Settlement Class Members who do not submit a timely Request for Exclusion from the settlement ("Net Settlement Amount").

Defendant will pay the employer's share of payroll taxes, in addition to (*i.e.*, separate and apart from) the settlement amount, arising from settlement awards paid to Class Members in the class who do not submit a timely Request for Exclusion from the settlement. All of the above payments are subject to final approval from the Court.

B. Calculation of Individual Settlement Payments

The Settlement Administrator, Phoenix Settlement Administrators will distribute settlement payments to each class member who does not submit a timely Request for Exclusion from the settlement. Specific calculations of individual settlement payments shall be made as follows:

- (a) After deducting the Court-approved amounts above, the balance of the Settlement Amount will form the Net Settlement Amount for distribution to the Settlement Class Members who do not submit a timely Request for Exclusion from the settlement. The Net Settlement Amount (after Court-approved deductions) will total approximately **\$130,666.67**, less the Class Members' individual shares of state and federal payroll taxes/withholdings. The Individual Settlement Payments for each Settlement Class Member will be calculated as follows: Compensable workweeks will be all weeks worked by Class Members between April 8, 2015 and November 22, 2019. The dollars per compensable workweek will be calculated by dividing the Net Settlement Amount by the total weeks worked by Class Members to determine a Workweek Value. The Workweek Value will be multiplied by the number of workweeks each Participating Class Member worked during the Class Period to determine

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

the total settlement distribution each claimant will receive, prior to legal deductions. The Individual Settlement Payment for Class Members will be reduced by any required legal deductions on the wages paid to each Class Member.

- (b) Defendant's records show that you were employed for [start date] to [end date] between April 8, 2015 and November 22, 2019 and that you worked a total of _[##]_ compensable workweeks as an hourly non-exempt employee in California during that period. (You may have worked for Defendant prior to April 8, 2015, at Defendant's Bay School location, or as a Head Chef, but that time is not included for purposes of this settlement.) *If you disagree with the employment dates listed above or the number of compensable workweeks worked during the period between April 8, 2015 and November 22, 2019 in California, please contact the Settlement Administrator no later than [45 days from mailing]. You will be asked to provide documents to support your dispute. **If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator may reject your challenge.***

Class members should consult their tax advisors concerning the tax consequences of the payments they receive under the settlement. For purposes of this settlement, thirty-three percent (33%) of each class member's individual settlement payment will be treated as wages, and the remaining sixty-seven percent (67%) as penalties and interest. This Notice is not intended to provide legal or tax advice. To the extent this notice or any of its attachments is interpreted to contain or constitute advice regarding any United States or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

C. When Will I Get Paid?

If you do not submit a timely Request for Exclusion, the payment will be distributed in approximately **December of 2020**. This date may be delayed depending on when the Court grants preliminary and/or final approval of the Settlement.

D. Release of Claims

Upon the Final Approval Date and payment by Defendant of the Gross Settlement Amount to the Settlement Administrator, Plaintiff and all Settlement Class Members, except those who have submitted a timely and valid Request for Exclusion, waive, release, discharge, and promise never to assert in any forum against Defendant, its parents, subsidiaries, predecessors or successors in interest, or the officers, directors, shareholders, or employees, of any of them, all claims that are asserted, or could have been asserted, against Defendant based on the factual allegations in Plaintiff's operative pleading, arising or accruing during the Class Period, including but not limited, to, that Defendant, (a) failed to pay overtime wages; (b) failed to pay minimum wages or to pay wages for all hours worked; (c) failed to provide compliant meal and rest periods and pay associated premium pay; (d) failed to timely pay all wages upon termination; (e) failed to timely pay wages during employment; (f) failed to provide legally compliant or accurate wage statements; (g) failed to provide employees expenses or reimbursements incidental to employment; (h) unlawfully manipulated time clock and time sheets to deduct from hours work or avoid meal period violations; (i) failed to pay wage for employee time spent "donning" and "doffing"; (j) failed to correctly pay overtime wages by failing to include bonuses in calculating the overtime premium rate, and (k) by engaging in any or all of the aforementioned conduct violated, is liable under the California Labor Code, including but not limited to, Sections 200, 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1194.2, 2802 and IWC Wage Order No. 5, recoverable under Cal Code tit. 5 section 110959 (California Wage Order 5-2001), California Business & Professions Code § 17200 et seq. (in connection with the Labor Code

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

violations asserted or that could have been asserted based on the factual allegations in the Operative Pleading), California Civil Code § 3278, and California Code of Civil Procedure § 1021.5; and (l) for individuals employed during the PAGA Period, all asserted PAGA claims arising out of the Labor Code violations alleged in the Operative Pleadings under California Labor Code § 2698 et seq. (hereinafter collectively referred to as the “Released Claims”).

What are my rights and options as a Settlement Class Member?

Option 1 – Do Nothing and Participate in the Settlement

If you take no action, you will be included in the settlement, release your claims and receive payment.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator that includes your name, signature, and the following statement: “Please exclude me from the Settlement Class in the *Aurelia Ramirez v. Acre Gourmet, Inc.* matter” or a statement of similar meaning. Sign, date, mail or fax the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator
c/o _____

Fax: _____

The written request to be excluded must be postmarked or faxed not later than [45 days after mailing]. If you submit a request for exclusion which is not postmarked or faxed no later than [45 days after mailing], your request for exclusion will be rejected, and you will be included in the Settlement Class.

Option 3 – File an Objection with the Court

If you wish to object to the settlement because you find it unfair or unreasonable, you may mail a written objection with the Settlement Administrator stating why you object to the settlement. For the objection to be valid, it must include: (i) the objector’s full name, signature, and address; and (ii) a written statement of all grounds for the objection accompanied by legal authority, if any, for such objection. Further, if any objector intends to appear at the Final Approval Hearing, either in person or through counsel, at his or her own expense, he or she should include notice of the fact that he or she intends to appear and state the purpose for his or her appearance with his or her objection.

All objections should be mailed to the Settlement Administrator not later than [45 days after mailing], although failing to object to the settlement in writing will not foreclose your ability to appear in person to object to the settlement. By mailing an objection or objecting in person, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

You may also, if you wish, appear at the Final Approval Hearing set for [date and time]. in Department 613 of the Superior Court of the State of California, for the County of San Francisco, Civic Center Courthouse, located at 400 McAllister Street, San Francisco, California 94102 and discuss your objection with the Court and the parties at your own expense. You may also retain an attorney, at your own expense, to represent you at the hearing.

Who Are the Attorneys Representing Your Interest?

The following attorneys have been appointed by the Court as Class Counsel and represent your interest. If you should have any questions or concerns about the settlement, you can call the Settlement Administrator or Class Counsel.

Bibiyan Law Group, P.C.
David D. Bibiyan
1801 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone (310) 438-5555

J. Gill Law Group, P.C.
Jasmin K. Gill
515 South Flower Street, Suite 1855
Los Angeles, California 90071
Telephone (310) 728-2137
Class Counsel

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the Settlement Agreements, and other papers filed in the Lawsuit.

All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, DEFENDANT OR THE JUDGE WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

EXPLANATION FORM

Your Employment Information

Defendant's records reflect that you worked _____ workweeks between April 8, 2015 and November 22, 2019 (the "Class Period").

If you believe the above information is NOT accurate, you must mail or fax notice of your dispute to the Settlement Administrator no later than [45 days after mailing]. Note: You may be required to submit documentation (pay stubs, schedules, etc.) to support your belief. If Defendant's records are inconsistent with the information you have stated, and the documentation you submit does not conclusively establish facts different than those reflected in Defendant's records, then Defendant's records will control. ***If you fail to timely dispute the number of workweeks attributed to you, you will be deemed to have waived any objection to their accuracy and any claim to any additional settlement payment based on different data.***

Approximate Payment

Your settlement payment depends on the number of workweeks you worked for Defendant during the Class Period, as well as other factors, such as the final amount of claims administration costs and legal fees. For example, if you worked during the entire Class Period, your settlement award would be higher than if you worked for a short time. The parties estimate that your settlement payment will be approximately \$ _____, inclusive of wages, penalties and interest and less ordinary payroll deductions. This is only an estimate and not a guaranteed amount. If you opt out of the settlement, as described in the Notice, you will not receive any payment.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

EXHIBIT B

1 **BIBIYAN LAW GROUP, P.C.**
David D. Bibiyan, Esq. (SBN 287811)
2 1801 Century Park East, Suite 2600
Los Angeles, California 90067
3 Tel: (310) 438-5555; Fax: (310) 300-1705

4 **J. GILL LAW GROUP, P.C.**
Jasmin K. Gill (SBN 315090)
5 515 S. Flower St., Suite 1855
Los Angeles, California 90071
6 Tel: (310) 728-2137

7 Attorneys for Plaintiff, AURELIA RAMIREZ, on
behalf of herself and all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

10

11 AURELIA RAMIREZ, on behalf of herself
and all others similarly situated,

12

13 Plaintiff,

14 v.

15 ACRE GOURMET, INC., a California
corporation; and DOES 1 through 100,
16 inclusive,

17 Defendants.

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CASE NO.: CGC-19-575117

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF;
4. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*;
8. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
9. VIOLATION OF LABOR CODE § 558;
10. VIOLATION OF LABOR CODE § 1197.1; and
11. CIVIL PENALTIES UNDER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000]

1 COMES NOW plaintiff AURELIA RAMIREZ (“Plaintiff”), on behalf of herself and all
2 others similarly situated, and alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action and Representative Action, pursuant to California Code of
6 Civil Procedure section 382 and Labor Code section 2698, *et seq.*, on behalf of Plaintiff and all
7 other current and formerly situated and aggrieved employees employed by or formerly employed
8 by ACRE GOURMET, INC., a California corporation (“Acre Gourmet”), and any of their
9 respective subsidiaries or affiliated companies within the State of California (collectively with Doe
10 defendants as further defined below, “Defendants”).

11 2. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendants have had a consistent policy or practice of failing to pay overtime wages to
13 Plaintiff and other non-exempt employees in the State of California in violation of California state
14 wage and hour laws as a result of, without limitation, Plaintiff and similarly situated employees
15 routinely working over eight (8) hours per day, forty (40) hours per week, and seven consecutive
16 work days in a work week without being properly compensated for hours worked in excess of (8)
17 hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on
18 the seventh consecutive work day in a work week by, among other things, failing to accurately
19 track and/or pay for all hours actually worked, engaging, suffering or permitting employees to
20 work off the clock without compensating employees for their time spent putting on or taking off
21 their uniforms and/or traveling to and from their lockers and/or to launder clothing, detrimental
22 rounding or auto-deduction of employee work hours, editing and/or manipulation of time worked
23 to reflect lesser hours worked by employees than actually worked, and/or paying overtime hours at
24 the regular rate or otherwise improper rate(s) of pay due to a failure to include non-discretionary
25 bonuses in employees’ regular rate and overtime rate of pay, resulting in underpayment of wages
26 to Plaintiff and similarly situated employees.

27 3. For at least four (4) years prior to the filing of this Action and continuing to the
28 present, Defendants have had a consistent policy or practice of failing to pay minimum wages to

1 Plaintiff and other non-exempt employees in the State of California in violation of California state
2 wage and hour laws as a result of, among other things, failing to accurately track and/or pay for all
3 hours actually worked, engaging, suffering or permitting employees to work off the clock without
4 compensating employees for their time spent putting on or taking off their uniforms and/or
5 traveling to and from their lockers and/or to launder clothing, detrimental rounding or auto-
6 deduction of employee work hours, and editing and/or manipulation of time worked to reflect
7 lesser hours worked by employees than actually worked.

8 4. For at least four (4) years prior to the filing of this Action and continuing to the
9 present, Defendants have had a consistent policy or practice of failing to provide Plaintiff and
10 other similarly situated employees or former employees within the State of California a thirty (30)
11 minute uninterrupted and timely meal period for days on which the employees worked more than
12 five (5) hours in a work day and a second thirty (30) minute timely uninterrupted meal period for
13 days on which employees worked in excess of ten (10) hours in a work day, and failing to provide
14 compensation for such unprovided meal periods as required by California wage and hour laws.

15 5. For at least four (4) years prior to the filing of this Action and continuing to the
16 present, Defendants have had a consistent policy or practice of failing to provide Plaintiff and
17 similarly situated employees or former employees within the State of California timely, paid and
18 uninterrupted rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
19 thereof and failing to provide compensation for such unprovided rest periods as required by
20 California wage and hour laws.

21 6. For at least one (1) year prior to the filing of this Action and continuing to the
22 present, Defendants have had a consistent policy or practice of intentionally failing to furnish
23 employees with itemized wage statements that accurately reflect: gross wages earned; total hours
24 worked; net wages earned; and all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate as required by California wage and
26 hour laws.

27 7. Plaintiff, on behalf of herself and all other similarly situated employees, brings this
28 Action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204,

1 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2699 and California Code of
2 Regulations, Title 8, section 11050, seeking, *inter alia*, overtime wages, minimum wages,
3 premium wages for missed meal and rest periods, penalties, and reasonable attorneys' fees and
4 costs.

5 8. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to
6 California Business and Professions Code sections 17200 through 17208, also seeks all monies
7 owed but withheld and retained by Defendants to which Plaintiff and members of the Class are
8 entitled.

9 **PARTIES**

10 **A. Plaintiff**

11 9. Plaintiff is a resident of California. At all relevant times herein, Plaintiff is
12 informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
13 exempt employee, with duties that included, but were not limited to, cooking and preparing food
14 to serve students of schools and/or other customers, from approximately September of 2015
15 through January of 2019.

16 **B. Defendants**

17 10. Plaintiff is informed and believes and based thereon alleges that defendant Acre
18 Gourmet is, and at all times relevant hereto was, a corporation organized and existing under and
19 by virtue of the laws of the State of California, doing business in, among other places, San
20 Francisco County, State of California. Plaintiff is informed and believes and based thereon alleges
21 that Acre Gourmet is a privately-held company specializing in the food and restaurant service
22 industry. At all relevant times herein, defendant Acre Gourmet employed Plaintiff and other
23 similarly situated employees within the State of California.

24 11. The true names and capacities, whether individual, corporate, associate, or
25 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
26 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
27 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
28 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts

1 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
2 names and capacities of the defendants designated hereinafter as DOES when such identities
3 become known. Plaintiff is informed and believes, and based thereon alleges, that each defendant
4 acted in all respects pertinent to this action, as the agent of the other defendant(s), carried out a
5 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each joint
6 defendant are legally attributable to the other defendants. As employers of Plaintiff and the
7 Classes throughout the relevant time period, Defendants, and each of them, are either solely, or
8 jointly and severally liable for the damages alleged in Plaintiff's operative complaint. Whenever,
9 heretofore or hereinafter, reference is made to "Defendants," it shall include Acre Gourmet, any of
10 its subsidiaries or affiliated companies within the State of California, as well as DOES 1 through
11 100 identified herein.

12 **JURISDICTION**

13 12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
14 of Civil Procedure section 410.10.

15 13. Venue is proper in the County of San Francisco, California pursuant to Code of
16 Civil Procedure section 392, *et seq.* because it is the location where defendants, or some of them,
17 have their principal place of business. It is also where performance of the employment agreement,
18 or part of it, between Plaintiff and Defendants, was due to be performed and was actually
19 performed. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly
20 situated within San Francisco and the State of California. Moreover, Defendants employ
21 numerous Class Members in San Francisco and the State of California.

22 **FACTUAL BACKGROUND**

23 14. Plaintiff and other similarly situated employees have not been paid, during the
24 relevant liability periods, overtime wages for all overtime hours worked, as a result of, including
25 but not limited to, Plaintiff and similarly situated employees routinely working over eight (8)
26 hours per day, forty (40) hours per week or seven (7) consecutive work days in a work week
27 without being properly compensated for the hours worked in excess of (8) hours per day, forty
28 (40) hours per week, or seven (7) consecutive work days in a workweek at the proper overtime

1 rate of pay. Specifically, among other things, Defendants routinely failed to accurately track
2 and/or pay for all hours actually worked, engaged, suffered or permitted employees to work off the
3 clock without compensating employees for their time spent putting on or taking off their uniforms
4 and/or traveling to and from their lockers and/or to launder clothing, detrimental rounding or auto-
5 deduction of employee work hours, editing and/or manipulation of time worked to reflect lesser
6 hours worked by employees than actually worked, and/or paid overtime hours at the regular rate or
7 otherwise improper rate(s) of pay due to a failure to include non-discretionary bonuses in
8 employees' regular rate and overtime rate of pay, resulting in underpayment of wages to Plaintiff
9 and similarly situated employees.

10 15. Plaintiff and other similarly situated employees have not been paid, during the
11 relevant liability periods, minimum wages for all regular hours worked, as a result of, including
12 but not limited to, a consistent policy of failing to pay minimum wages to Plaintiff and other non-
13 exempt employees in the State of California in violation of California state wage and hour laws as
14 a result of, without limitation, Defendants routinely, among other things, failed to accurately track
15 and/or pay for all hours actually worked, engaged, suffered or permitted employees to work off the
16 clock without compensating employees for their time spent putting on or taking off their uniforms
17 and/or traveling to and from their lockers and/or to launder clothing, detrimental rounding or auto-
18 deduction of employee work hours, and editing and/or manipulation of time worked to reflect
19 lesser hours worked by employees than actually worked, to the detriment of Plaintiff and other
20 similarly situated employees.

21 16. Defendants have had a consistent policy of failing to provide Plaintiff and other
22 similarly situated employees or former employees within the State of California a thirty (30)
23 minute uninterrupted timely meal period for days on which the employees worked more than five
24 (5) hours in a work day and a second thirty (30) minute timely uninterrupted meal period for days
25 on which the employees worked in excess of ten (10) hours in a work day and failing to provide
26 compensation for such unprovided meal periods.

27 17. Defendants have had a consistent policy of failing to provide Plaintiff and similarly
28 situated employees or former employees within the State of California paid, uninterrupted and

1 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
2 thereof and failing to provide compensation for such unprovided rest periods as required by
3 California wage and hour laws.

4 18. At the time of Plaintiff's employment and the employment of other former
5 employees of Defendants ended, Defendants, among other things, willfully failed to pay overtime
6 wages, minimum wages, and one hour of wages in lieu of each unprovided or interrupted meal
7 period and unprovided rest period, as set forth herein, prior to their resignation and/or termination.

8 19. Defendants have failed to comply with Labor Code section 226, subdivision (a) by
9 intentionally not providing itemized wage statements that accurately reflect, among other things,
10 gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect
11 during the pay period and the corresponding number of hours worked at each hourly rate as
12 required by California wage and hour laws.

13 20. Plaintiff and other similarly situated employees or former employees at all times
14 pertinent hereto were not exempt from minimum wage requirements, overtime wage requirements,
15 provision of meal breaks or compensation in lieu thereof, provision of rest breaks or compensation
16 in lieu thereof, provision of accurate, itemized wage statements, provision of all wages before
17 resignation or termination, and other such provisions of California law, and the implementing
18 rules and regulations of the IWC California Wage Orders.

19 21. At all times herein, Defendants, and each of them, were liable for unpaid wages,
20 penalties arising therefrom, and related damages pursuant to, among other authorities, the joint
21 employer doctrines and agency doctrines.

22 **CLASS ACTION ALLEGATIONS**

23 22. Plaintiff brings this Action on behalf of herself and all others similarly situated, as a
24 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent five (5)
25 Classes composed of and defined as follows:

26 **Non-Exempt Class**

27 All current and former non-exempt employees of Defendants within the State of
28 California at any time commencing four (4) years preceding the filing of Plaintiff's

1 complaint up until the time that notice of the class action is provided to the class
2 (collectively referred to as “Non-Exempt Class”).

3 **Meal Period Class**

4 All current and former non-exempt employees of Defendants within the State of
5 California at any time commencing four (4) years preceding the filing of Plaintiff’s
6 complaint up until the time that notice of the class action is provided to the class
7 who worked shifts of five (5) hours or more (collectively referred to as “Meal
8 Period Class”).

9 **Rest Period Class**

10 All current and former non-exempt employees of Defendants within the State of
11 California at any time commencing four (4) years preceding the filing of Plaintiff’s
12 complaint up until the time that notice of the class action is provided to the class,
13 who worked shifts of three and-a-half (3 ½) hours or more (collectively referred to
14 as the “Rest Period Class”)

15 **Late Pay Class**

16 All former non-exempt employees of Defendants within the State of California at
17 any time commencing three (3) years preceding the filing of Plaintiff’s complaint
18 up until the time that notice of the class action is provided to the class, who did not
19 receive all their due wages upon termination and/or resignation of their
20 employment (collectively referred to as “Late Pay Class”).

21 **Wage Statement Class**

22 All current and former non-exempt employees of Defendants within the State of
23 California to whom, at any time commencing one (1) year preceding the filing of
24 Plaintiff’s complaint up until the time that notice of the class action is provided to
25 the class, were provided with wage statements (collectively referred to as “Wage
26 Statement Class”).

27 23. Plaintiff reserves the right under California Rules of Court, rule 3.765, subdivision
28 (b) to amend or modify the class description with greater specificity or further division into
subclasses or limitation to particular issues.

29 24. This Action has been brought and may properly be maintained as a class action
30 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
31 community of interest in the litigation and the proposed classes are easily ascertainable.

32 **A. Numerosity**

33 25. The potential members of the Class as defined are so numerous that joinder of all

1 the members of the Class is impracticable. While the precise number of Class Members has not
2 been determined yet, Plaintiff is informed and believes that there are over thirty (30) Class
3 Members employed by Defendants within the State of California.

4 26. Accounting for employee turnover during the relevant time periods necessarily
5 increases this number substantially. Plaintiff alleges Defendants' employment records would
6 provide information as to the number and location of all Class Members. Joinder of all members
7 of the proposed Class is not practicable.

8 **B. Commonality**

9 27. There are questions of law and fact common to Class Members. These common
10 questions include, but are not limited to:

- 11 a. Did Defendants violate Labor Code sections 510 and 1194 by not
12 compensating Class Members who worked greater than 8 hours in a
13 workday, 40 hours in a workweek, or seven (7) consecutive work days in a
14 workweek with all overtime wages due by failing to track and/or pay for all
15 hours actually worked?
- 16 b. Did Defendants violate Labor Code section 510 and 1194 by not
17 compensating Class Members with overtime wages at the proper overtime
18 rate(s)?
- 19 c. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing
20 to adequately track (and therefore adequately pay minimum wages) for time
21 worked by Class Members?
- 22 d. Did Defendants violate Labor Code sections 510, 1194 and 1197 by
23 detrimentally rounding, auto-deducting, editing or otherwise manipulating
24 Class Members' time entries to reflect less hours than actually worked?
- 25 e. Did Defendants violate Labor Code sections 510, 1194 and 1197 by
26 engaging, suffering, or permitting Class Members to work off the clock?
- 27 f. Are Class Members entitled to liquidated damages under Labor Code
28 section 1194.2 for Defendants' failure to pay minimum wages for all hours

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worked?

- g. Did Defendants violate Labor Code section 512 by not providing Class Members with compliant meal periods?
- h. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed or interrupted meal periods?
- i. Did Defendants violate the applicable Wage Order(s) by not providing Class Members with compliant rest periods?
- j. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed or interrupted rest periods?
- k. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?
- l. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?
- m. Are Defendants liable to Class Members for penalties under Labor Code section 203?
- n. Did Defendants violate the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?
- o. Are Class Members entitled to restitution of penalty wages under Business and Professions Code section 17203?
- p. Are Class Members entitled to attorneys' fees?
- q. Are Class Members entitled to costs?
- r. Are Class Members entitled to interest?

C. Typicality

28. The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any member of the classes, and the relief sought is typical of the relief which would be sought by each of the members of the classes in separate actions. Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by Defendants' common course

1 of conduct in violation of laws and regulations that have the force and effect of law and statutes as
2 alleged herein.

3 **D. Adequacy of Representation**

4 29. Plaintiff will fairly and adequately represent and protect the interest of the members
5 of the Classes. Counsel who represents Plaintiff is competent and experienced in litigating wage
6 and hour class actions.

7 **E. Superiority of Class Action**

8 30. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
10 questions of law and fact common to the Classes predominate over any questions affecting only
11 individual members of each Class. Each member of each Class has been damaged and is entitled
12 to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum and
13 overtime wages, failing to provide meal and rest breaks or compensation in lieu thereof, failing to
14 provide accurate itemized wage statements and failing to pay all wages due upon termination
15 and/or resignation.

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

20 **PAGA REPRESENTATIVE ALLEGATIONS**

21 32. On or around March 20, 2019, Plaintiff provided written notice by certified mail,
22 with return receipt requested, of Defendants' violations of various, including the herein described,
23 provision of the Labor Code, to the Labor and Workforce Development Agency ("LWDA"), as
24 well as to Defendants, and each of them.

25 33. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)
27 calendar days of the March 20, 2019 postmarked date of the herein-described written notice sent
28 by Plaintiff to the LWDA and Defendants.

1 34. Plaintiff is informed and believes, and based thereon alleges that Plaintiff and other
2 similarly aggrieved employees or former employees have not been paid, during the relevant
3 liability periods, wages for all time worked, including overtime wages, as a result of, including but
4 not limited to, a consistent policy or practice by Defendants of failing to pay overtime wages to
5 Plaintiff and other non-exempt employees in the State of California in violation of California state
6 wage and hour laws as a result of, without limitation, Plaintiff and similarly aggrieved employees
7 routinely working over eight (8) hours per day, forty (40) hours per week or seven (7) consecutive
8 work days in a work week without being properly compensated for all hours worked in excess of
9 eight (8) hours per day, forty (40) hours per week, and/or hours worked on the seventh consecutive
10 work day in a workweek by, as a result of, among other things, Defendants failing to accurately
11 track and/or pay for all hours actually worked, engaging, suffering, or permitting employees to
12 work off the clock without compensating employees for their time spent putting on or taking off
13 their uniforms and/or traveling to and from their lockers and/or to launder clothing, detrimental
14 rounding or auto-deduction of employee work hours, editing and/or manipulation of time worked
15 to reflect lesser hours worked by employees than actually worked, and/or paying overtime hours at
16 the regular rate or otherwise improper rate(s) of pay due to failure to include non-discretionary
17 bonuses in employees' regular rate and overtime rate of pay, resulting in underpayment of wages
18 to Plaintiff and other aggrieved employees. Consequently, Plaintiff is informed and believes, and
19 based thereon alleges that Defendants violated Labor Code sections 510, 1194, and applicable
20 Wage Orders based on their practice of failing to pay overtime wages, entitling Plaintiff and
21 similarly aggrieved employees to relief under these sections. In addition, Defendants would also
22 be liable for civil penalties (including, without limitation, in the form of unpaid wages) pursuant to
23 Labor Code sections 558 and 2699.

24 35. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and
25 other similarly aggrieved employees or former employees have not been paid, during the relevant
26 time period, wages for all time worked, including minimum wages as a result of, among other
27 things, Defendants routinely failing to accurately track and/or pay for all hours actually worked,
28 engaging, suffering or permitting employees to work off the clock without compensating

1 employees for their time spent putting on or taking off their uniforms and/or traveling to and from
2 their lockers and/or to launder clothing, detrimental rounding or auto-deduction of employee work
3 hours, and editing and/or manipulation of time worked to reflect lesser hours worked by
4 employees than actually worked, all to the detriment of Plaintiff and other aggrieved employees.
5 As such, Plaintiff is informed and believes, and based thereon alleges that Defendants violated,
6 without limitation, Labor Code section 1197 and applicable Wage Orders, based on their
7 continued failure to pay minimum wages, entitling Plaintiff and similarly aggrieved employees to
8 relief under, without limitation, Labor Code sections 1194 and 1194.2. Defendants would also be
9 liable for civil penalties (including, without limitation, in the form of unpaid wages) pursuant to
10 Labor Code sections 558, 1197.1, and 2699.

11 36. Plaintiff is informed and believes and based thereon alleges that Defendants
12 maintain a policy or practice of compelling their employees to work in excess of five (5) and ten
13 (10) hours per day without being afforded uninterrupted, timely, and full 30-minute meal periods
14 or compensation in lieu thereof. Consequently, Plaintiff alleges that Defendants violated Labor
15 Code section 512, entitling Plaintiff and other aggrieved employees to premium payments under
16 Labor Code section 226.7. Defendants would also be liable for civil penalties (including, without
17 limitation, in the form of unpaid wages) pursuant to Labor Code sections 558 and 2699.

18 37. Plaintiff is informed and believes and based thereon alleges that Defendants
19 maintain a policy or practice of compelling their non-exempt employees, including, without
20 limitation, Plaintiff, to work over four-hour periods (or major fractions thereof) without
21 authorizing and permitting their employees to take paid, timely, uninterrupted, and full ten-minute
22 rest periods in which the employees are completely relieved of all of their duties. As such,
23 Plaintiff alleges that she and other aggrieved employees are entitled to relief under, without
24 limitation, Labor Code section 226.7. Defendants would also be liable for civil penalties
25 (including, without limitation, in the form of unpaid wages) pursuant to Labor Code sections 558
26 and 2699.

27 38. Plaintiff is informed and believes and based thereon alleges that Defendants failed
28 and continue to fail to keep adequate, accurate, and/or non-fraudulent time records as required by

1 Labor Code sections 226 and 1174, making it difficult for Plaintiff and other aggrieved employees
2 to calculate their unpaid wages and/or premium payments.

3 39. Plaintiff is informed and believes and based thereon alleges that Defendants also
4 intentionally failed and continue to fail to furnish employees, including, without limitation,
5 Plaintiff, with itemized wage statements that accurately reflect all hours worked, an accurate
6 calculation of net and gross wages earned, all applicable and correct rates of pay, overtime wages
7 earned, regular wages earned, and premium wages due for missed meal and/or rest periods, and
8 other such information, as required by Labor Code section 226, subdivision (a). Consequently,
9 since Defendants would have failed to comply with Labor Code section 226, subdivision (a),
10 Plaintiff and similarly aggrieved employees would be entitled to recover penalties under, without
11 limitation, Labor Code section 226, subdivision (e). Defendants would also be liable for civil
12 penalties pursuant to Labor Code sections 226.3, 558, and 2699.

13 40. Plaintiff is informed and believes and based thereon alleges that Defendants also
14 failed and refused, and continue to fail and refuse, to timely pay compensation to Plaintiff and
15 other terminated or resigned employees, including but not limited to, all wages owed as a result of
16 Plaintiff's information and belief regarding Defendants' practice or policy of failing to pay, among
17 other wages, overtime wages, minimum wages, and one hour of wages in lieu of each untimely,
18 unprovided or interrupted meal period and each untimely, unprovided or interrupted rest period.
19 Consequently, Defendants would be liable for waiting time penalties for having violated
20 California Labor Code sections 201, 202, and 203. Defendants would also be liable for civil
21 penalties pursuant to Labor Code sections 558 and 2699.

22 41. Plaintiff and other similarly aggrieved employees or former employees at all times
23 pertinent hereto were not exempt from the overtime, minimum wage, meal break, rest break, wage
24 statement, timely pay, and other such provisions of California law, and the implementing rules and
25 regulations of the IWC California Wage Orders. As a result of these violations, Defendants are
26 liable for civil penalties under PAGA.

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28 / / /

1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay Overtime Wages – Against All Defendants)**

3 42. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this Complaint as though fully set forth hereat.

5 43. At all times relevant to this Complaint, Labor Code section 510 was in effect and
6 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
7 one workday and any work in excess of forty hours in any one workweek and the first eight hours
8 on the seventh day of work in any one workweek shall be compensated at the rate of no less than
9 one and one-half times the regular rate of pay for an employee.”

10 44. At all times relevant to this Complaint, Labor Code section 510 further provided
11 that “[a]ny work in excess of twelve (12) hours in one day shall be compensated at the rate of no
12 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
13 (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
14 the regular rate of pay of an employee.”

15 45. Plaintiff is informed and believes and thereon alleges that at all times mentioned,
16 Plaintiff and the Non-Exempt Class worked for Defendants during shifts that consisted of more
17 than eight (8) hours in a work day, twelve (12) hours per day, and/or more than forty (40) hours in
18 a work week, and on seven straight work days were not paid overtime wages for all hours worked
19 as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all
20 hours actually worked, engaging, suffering, or permitting employees to work off the clock without
21 compensating employees for their time spent putting on or taking off their uniforms and/or
22 traveling to and from their lockers and/or to launder clothing, detrimental rounding or auto-
23 deduction of employee work hours, editing and/or manipulation of time worked to reflect lesser
24 hours worked by employees than actually worked, and/or paying overtime hours at the regular rate
25 or otherwise improper rate(s) of pay due to a failure to include non-discretionary bonuses in
26 employees’ regular rate and overtime rate of pay, resulting in underpayment of wages to Plaintiff
27 and similarly situated employees in violation of the Labor Code, including, among others, sections
28 1194, 1197 and applicable Wage Orders.

1 46. Accordingly, by requiring Plaintiff and the Non-Exempt Class to work in excess of
2 eight (8) hours per day, twelve (12) hours per day, forty (40) hours per week, and seven straight
3 work days without properly compensating for overtime wages, as described above, Defendants
4 willfully violated the provisions of the Labor Code, among others, sections 510, 1194, 1197 and
5 applicable IWC Wage Orders, and California law.

6 47. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Class
7 have been deprived of overtime wages in amounts to be determined at trial, and are entitled to
8 recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant
9 to Labor Code sections 1194 and 1199, Code of Civil Procedure sections 1021.5 and 1032, and
10 Civil Code section 3287.

11 **SECOND CAUSE OF ACTION**

12 **(Failure to Provide Minimum Wages – Against All Defendants)**

13 48. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth hereat.

15 49. At all relevant times, Plaintiff and the members of the Non-Exempt Class were
16 employees of Defendants covered by Labor Code section 1197 and applicable Wage Orders.
17 Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and the members of
18 the Non-Exempt Class were entitled to receive minimum wages for all hours worked or otherwise
19 under Defendants' control.

20 50. Plaintiff is informed and believes and thereon alleges that Defendants failed to pay
21 Plaintiff and members of the Non-Exempt Class minimum wages for all hours worked as a result
22 of, including but not limited to, failing to accurately track and/or pay for all hours actually worked,
23 engaging, suffering or permitting employees to work off the clock without compensating
24 employees for their time spent putting on or taking off their uniforms and/or traveling to and from
25 their lockers and/or to launder clothing, detrimental rounding or auto-deduction of employee work
26 hours, editing and/or manipulation of time worked to reflect lesser hours worked by employees
27 than actually worked in violation of the Labor Code, including, among others, sections 1194,
28 1194.2, 1197 and applicable Wage Orders.

1 51. As a result of Defendants' unlawful conduct, Plaintiff and members of the Non-
2 Exempt Class have suffered damages in an amount, subject to proof, to the extent they were not
3 paid minimum wages for all hours worked or otherwise under Defendants' control.

4 52. Pursuant to Labor Code section 1194 and 1194.2, Code of Civil Procedure sections
5 1021.5 and 1032, and Civil Code section 3287, Plaintiff and members of the Non-Exempt Class
6 are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon,
7 liquidated damages, reasonable attorneys' fees and costs of suit.

8 **THIRD CAUSE OF ACTION**

9 **(Failure to Provide Meal Periods or Compensation – Against All Defendants)**

10 53. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs of this Complaint as though fully set forth hereat.

12 54. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer
13 shall employ an employee for a work period of more than five (5) hours without a timely meal
14 break of not less than thirty (30) minutes in which the employee is relieved of all of his or her
15 duties. Furthermore, no employer shall employ an employee for a work period of more than ten
16 (10) hours per day without providing the employee with a second timely meal period of not less
17 than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and
18 other members of the Meal Period Class were not provided with requisite uninterrupted meal
19 periods as contemplated under the law.

20 55. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
21 with a meal period as provided in the applicable Wage Order of the Industrial Welfare
22 Commission, the employer shall pay the employee one additional hour of pay at the employee's
23 regular rate of compensation for each work day that the meal period is not provided.

24 56. Plaintiff is informed and believes and thereon alleges by their failure to provide
25 Plaintiff and members of the Meal Period Class with the meal periods contemplated by Labor
26 Code section 512, among other California authorities, and failing to provide compensation for
27 such unprovided meal periods, as alleged above, Defendants willfully violated the provisions of
28 Labor Code section 512 and applicable Wage Orders.

1 57. As a result of Defendants’ unlawful conduct, Plaintiff and the other members of the
2 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
3 not paid additional pay owed for missed untimely and incomplete meal periods.

4 58. Plaintiff and the other members of the Meal Period Class are entitled to recover the
5 full amount of their unpaid additional pay for missed meal periods, in amounts to be determined at
6 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’
7 fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections
8 1021.5 and 1032, and Civil Code section 3287.

9 **FOURTH CAUSE OF ACTION**

10 **(Failure to Provide Rest Periods or Compensation – Against All Defendants)**

11 59. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs of this Complaint as though fully set forth hereat.

13 60. California law and applicable Wage Orders require that employers “authorize and
14 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
15 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
16 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
17 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20)
18 minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be
19 provided thirty (30) minutes of paid rest period. Plaintiff and other members of the Rest Period
20 Class were not provided with requisite uninterrupted rest periods as contemplated under the law.

21 61. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
22 with a rest period as provided in the applicable Wage Order of the Industrial Welfare Commission,
23 the employer shall pay the employee one additional hour of pay at the employee’s regular rate of
24 compensation for each work day that the timely meal period or rest period is not provided.

25 62. Plaintiff is informed and believes and thereon alleges by their failure to provide
26 Plaintiff and other members of the Rest Period Class with the timely complete rest periods
27 contemplated by California law, and failing to provide compensation for such unprovided rest
28 periods, as alleged above, Defendants willfully violated the provisions of Labor Code section

1 226.7 and applicable Wage Orders.

2 63. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
3 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were
4 not paid additional pay owed for missed untimely and incomplete rest periods.

5 64. Pursuant to Labor Code section 226.7, Code of Civil Procedure sections 1021.5 and
6 1032, and Civil Code section 3287, Plaintiff and members of the Rest Period Class are entitled to
7 recover the full amount of their premium pay for unprovided rest periods, interest and penalties
8 thereon, and costs of suit.

9 **FIFTH CAUSE OF ACTION**

10 **(Waiting Time Penalties – Against All Defendants)**

11 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
12 the preceding paragraphs of this Complaint as though fully set forth hereat.

13 66. At all relevant times, Plaintiff and other members of the Late Pay Class were
14 employees of Defendants covered by Labor Code sections 201 and 202.

15 67. Pursuant to Labor Code sections 201 and 202, Plaintiff and other members of the
16 Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid
17 prior to termination, including overtime and minimum wages. Discharged employees were
18 entitled to payment of all wages earned and unpaid, including without limitation, overtime and
19 minimum wages, prior to discharge immediately upon termination. Employees who resigned were
20 entitled to payment of all wages earned and unpaid, including, without limitation, overtime and
21 minimum wages, prior to resignation within 72 hours after giving notice of resignation or, if they
22 gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid,
23 including overtime wages, at the time of resignation.

24 68. Plaintiff is informed and believes, and based thereon alleges that Defendants, due
25 to a pattern and practice of not paying all wages earned and owed, including minimum and
26 overtime wages, prior to resignation or termination, failed to pay Plaintiff and other members of
27 the Late Pay Class all wages earned and unpaid, including overtime wages and minimum wages
28 prior to resignation or termination in accordance with Labor Code sections 201 or 202.

1 were employees of Defendants covered by Labor Code section 226.

2 77. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the other
3 members of the Wage Statement Class were entitled to receive, semi-monthly or at the time of
4 each payment of wages, an accurate itemized statement showing gross wages earned net wages
5 earned, all applicable (and accurate) hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee, and other information
7 necessary to accurately appear on wage statements.

8 78. Plaintiff is informed and believes and thereon alleges that Defendants failed to
9 provide Plaintiff and the other members of the Wage Statement Class accurate itemized wage
10 statements in accordance with Labor Code section 226, subdivision (a).

11 79. Plaintiff and the other members of the Wage Statement Class are informed and
12 believe and thereon allege that at all relevant times, Defendants maintained and continue to
13 maintain a policy and practice of issuing wage statements that do not accurately reflect gross
14 wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours worked at each hourly rate as
16 required by California wage and hour laws. Defendants' practices resulted and continue to result
17 in the issuance of wage statements to Plaintiff and other members of the Wage Statement Class
18 that do not comply with the itemization requirement.

19 80. Defendants' failure to provide Plaintiff and other members of the Wage Statement
20 Class with accurate wage statements was knowing, intentional, and willful. Defendants had the
21 ability to provide Plaintiff and the other members of the Wage Statement Class with accurate wage
22 statements, but willfully provided wage statements that Defendants knew were not accurate.

23 81. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
24 Wage Statement Class have suffered injury. The absence of accurate information on their wage
25 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
26 and mathematical computations to determine the amount of wages owed, causes difficulty and
27 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
28 information about wages and amounts deducted from wages to state and federal governmental

1 agencies.

2 82. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and other members
3 of the Wage Statement Class are entitled to recover \$50 for the initial pay period during the period
4 in which violation of Labor Code section 226 occurred and \$100 for each violation of Labor Code
5 section 226 in a subsequent pay period, not to exceed an aggregate \$4,000.00 per employee.

6 83. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
7 Procedure section 1032, Civil Code section 3287, Plaintiff and the other members of the Wage
8 Statement Class are entitled to recover the full amount of penalties due under Labor Code section
9 226, subdivision (e), reasonable attorneys' fees and costs of suit.

10 **SEVENTH CAUSE OF ACTION**

11 **(Unfair Competition – Against All Defendants)**

12 84. Plaintiff realleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs of this Complaint as though fully set forth hereat.

14 85. The unlawful conduct of Defendants alleged herein constitutes unfair competition
15 within the meaning of Business and Professions Code section 17200. Due to their unlawful
16 business practices in violation of the Labor Code, Defendants have gained a competitive
17 advantage over other comparable companies doing business in the State of California that comply
18 with their obligations to compensate employees in accordance with the Labor Code.

19 86. Plaintiff is informed and believes and thereon alleges that as a result of Defendants'
20 unfair competition as alleged herein, Plaintiff and similarly situated Class Members have suffered
21 injury in fact and lost money or property. Plaintiff and similarly situated Class Members have
22 been deprived of overtime and minimum wage compensation, provision of meal and rest breaks or
23 compensation in lieu thereof, and from being provided with inaccurate wage statements, among
24 other things.

25 87. Pursuant to Business and Professions Code section 17203, Plaintiff and similarly
26 situated Class Members are entitled to restitution of all wages and other monies owed to them
27 under the Labor Code, including interest thereon, in which they had a property interest and which
28 Defendants nevertheless failed to pay them and instead withheld and retained for themselves.

1 Restitution of the money owed to Plaintiff and similarly situated Class Members is necessary to
2 prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor
3 Code.

4 88. Plaintiff and similarly situated Class Members are entitled to costs of suit under
5 Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

6 **EIGHTH CAUSE OF ACTION**

7 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

8 89. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs of this Complaint as though fully set forth hereat.

10 90. Defendants have had a consistent policy or practice of failing to comply with Labor
11 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
12 statements that accurately reflect all hours worked, all applicable and correct rates of pay,
13 overtime wages earned, regular wages earned, an accurate calculation of net and gross wages
14 earned, and premium wages due for missed meal and/or rest periods, and other such information
15 as required by California wage and hour laws.

16 91. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
17 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
18 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
19 for each violation in a subsequent citation, for which the employer fails to provide the employee a
20 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

21 92. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
22 this section are in addition to any other penalty provided by law.”

23 93. Plaintiff is informed and believes and based thereon alleges that Defendants failed
24 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
25 itemized wage statements that accurately reflect all hours worked, all applicable and accurate rates
26 of pay, overtime wages earned, regular wages earned, an accurate calculation of net and gross
27 wages earned, and premium wages due for missed meal and/or rest periods, and other such
28 information, as required by Labor Code section 226, subdivision (a).

1 94. Pursuant to Labor Code section 226.3, Plaintiff and other similarly aggrieved
2 employees or former employees he seeks to represent are entitled to recover civil penalties for
3 Defendants’ violation of Labor Code section 226, subdivision (a) in the amount of two hundred
4 fifty dollars (\$250) for each aggrieved employee or former employee per pay period for the initial
5 violation, and one thousand dollars (\$1,000) for each aggrieved employee or former employee per
6 pay period for each subsequent violation.

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8 **NINTH CAUSE OF ACTION**

9 **(Violation of Labor Code § 558 – Against All Defendants)**

10 95. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
and incorporates each by reference as though fully set forth hereat.

11 96. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other
12 person acting on behalf of an employer who violates, or causes to be violated . . . any provision
13 regulating hours and days of work in any order of the Industrial Welfare Commission” shall be
14 subject to a civil penalty as follows:

- 15 a. For any initial violation, fifty dollars (\$50) for each underpaid employee and for
16 each pay period for which the employee was underpaid in addition to an amount
17 sufficient to recover underpaid wages;
- 18 b. For each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to
20 an amount sufficient to recover underpaid wages;
- 21 c. Wages recovered pursuant to this section shall be paid to the affected employee.”

22 97. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
23 the decision that Plaintiff would not be paid the wages owed to Plaintiff as alleged herein,
24 including but not limited to wages owed to Plaintiff for all hours worked, including overtime and
25 minimum wages, and premium wages for missed meal and rest periods. As a direct and proximate
26 result of Defendants’ conduct, Plaintiff is entitled to recover directly from Defendants civil
27 penalties pursuant to Labor Code section 558.

28 98. For violation of Labor Code section 558, Plaintiff is entitled to recover civil

1 penalties in amounts to be determined at trial, as proscribed under Labor Code section 558,
2 subdivision (a).

3 **TENTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

5 99. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
6 and incorporates each by reference as though fully set forth hereat.

7 100. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
8 person acting either individually or as an officer, agent, or employee of another person, who pays
9 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
10 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
11 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
12 Section 203 as follows:

- 13 a. For any initial violation that is intentionally committed, one hundred dollars (\$100)
14 for each underpaid employee for each pay period for which the employee is
15 underpaid. This amount shall be in addition to an amount sufficient to recover
16 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
17 applicable penalties imposed pursuant to Section 203.
- 18 b. For each subsequent violation for the same specific offense, two hundred fifty
19 dollars (\$250) for each underpaid employee for each pay period for which the
20 employee is underpaid regardless of whether the initial violation is intentionally
21 committed. This amount shall be in addition to an amount sufficient to recover
22 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
23 applicable penalties imposed pursuant to Section 203.
- 24 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
25 Section 203, recovered pursuant to this section shall be paid to the affected
26 employee.”

27 101. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
28 the decision that Plaintiff would not be paid her due minimum wages as required due to, among

1 other things, Defendants routinely failing to accurately track and/or pay for all hours actually
2 worked, engaging, suffering or permitting employees to work off the clock, detrimental rounding
3 or auto-deduction of employee work hours, editing and/or manipulation of time worked to reflect
4 lesser hours worked by employees than actually worked, all to the detriment of Plaintiff and other
5 aggrieved employees. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled
6 to recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code
7 section 1197.1.

8 **ELEVENTH CAUSE OF ACTION**

9 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

10 102. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs of this Complaint as though fully set forth hereat.

12 103. Plaintiff is an “aggrieved employee” under PAGA, as she is and was employed by
13 Defendants during the applicable statutory period and suffered one or more of the Labor Code
14 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of herself and all
15 other similarly aggrieved current and former employees of Defendants, the civil penalties provided
16 by PAGA, plus reasonable attorneys’ fees and costs.

17 104. Plaintiff seeks to recover the PAGA civil penalties through a representative action
18 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
19 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
20 PAGA allegations described herein is not required.

21 105. Plaintiff is informed and believes and based thereon alleges that Defendants
22 violated, *inter alia*, 200, 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, and 1197,
23 among others.

24 106. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
25 such as Plaintiff, on behalf of themselves and other current and former employees within the
26 statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
27 specified in Labor Code section 2699.3.

28 107. Plaintiff has complied with the procedures for bringing suit specified in Labor

1 Code section 2699.3. Specifically, on or about March 20, 2019, Plaintiff gave written notice to the
2 LWDA and to Defendants of the specified provisions of the Labor Code alleged to have been
3 violated and those included herein, and the LWDA elected not to investigate.

4 108. Pursuant to Labor Code section 2699, subdivisions (a) and (f), Plaintiff seeks to
5 represent and is entitled to recover civil penalties for and on behalf of herself and similarly
6 aggrieved employees and former employees, for Defendants' violations of the herein and therein
7 described Labor Code violations during the Civil Penalty Period in the amount of one hundred
8 dollars (\$100) for each employee or former employee per pay period for the initial violation, and
9 two hundred dollars (\$200) for each employee or former employee per pay period for each
10 subsequent violation.

11 109. Pursuant to Labor Code section 2699, subdivision (g), Plaintiff and other similarly
12 aggrieved employees and former employees she seeks to represent are entitled to an award of
13 reasonable attorneys' fees and costs in connection with their herein-described claims for civil
14 penalties.

15 **DEMAND FOR JURY TRIAL**

16 110. Plaintiff demands a trial by jury on all causes of action contained herein.

17 **PRAYER**


18 **WHEREFORE**, on behalf of herself and all others similarly situated and aggrieved,
19 Plaintiff prays for judgment against Defendants as follows:

- 20 A. An Order certifying this case as a Class Action;
- 21 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
22 counsel as class counsel;
- 23 C. Damages for all wages earned and owed, including minimum and overtime wages
24 under Labor Code sections 203, 510, 1194, 1197, and 1199;
- 25 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 26 E. Damages for unpaid premium wages from missed meal and rest periods under,
27 among other Labor Code sections, 512 and 226.7;
- 28 F. Penalties for inaccurate wage statements under Labor Code section 226,

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- subdivision (e);
- G. Damages for unpaid penalties under Labor Code section 203;
- H. Waiting time penalties under Labor Code section 203;
- I. Civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699;
- J. Preliminary and permanent injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations;
- K. Restitution under Business and Professions Code section 17203;
- L. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- M. For costs of suit incurred herein;
- N. For reasonable attorneys' fees; and
- O. For such other and further relief as the Court deems just and proper.

Dated: February 6, 2020

BY: 

JASMIN K. GILL
Attorneys for Plaintiff AURELIA RAMIREZ, on
behalf of herself and all others similarly situated