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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17

18 ANTELMA CHAVEZ, as an
individual and on behalf of all others
19 similarly situated,

20 Plaintiff,

21 v.

22 LINCARE INC., a Delaware
corporation; LINCARE HOLDINGS
23 INC., a Delaware corporation; and
DOES 1 through 100,

24 Defendants.
25

Case No. 2:20-cv-02043 JWH-E
[Hon. John W. Holcomb, Courtroom 2]

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Action Filed: December 5, 2019
Date of Removal: March 2, 2020
Trial Date: February 1, 2022

1
2 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

3 IT IS HEREBY STIPULATED, by and among Plaintiffs ANTELMA
4 CHAVEZ and BERNAL MAZARIEGOS (“Plaintiffs”), on behalf of themselves
5 and the Settlement Class Members on the one hand, and Defendant LINCARE INC.
6 (“Defendant”), and subject to the approval of the Court, that the above-captioned
7 action is hereby being compromised and settled pursuant to the terms and conditions
8 set forth in this Joint Stipulation of Class Action Settlement and Release (the
9 “Settlement”).

10 **1. DEFINITIONS**

11 Capitalized terms used in this Settlement shall have the meanings set forth below:

12 1.1. “Actions” mean the lawsuit(s) entitled *Antelma Chavez, as an*
13 *individual and on behalf of all others similarly situated v. Lincare Inc., a Delaware*
14 *corporation; and DOES 1 through 100* (United States District Court for the Central
15 District of California Case No. 2:20-cv-02043 JWH- E (“Federal Class Action
16 Case”); and Superior Court of California, for the County of Ventura Case No. 56-
17 2019-00536955-CU-OE-VTA filed on December 5, 2019 (“State Court Class
18 Action Case”); and Superior Court of California, for the County of Ventura Case
19 No. 56-2020-00539898-CU-OE-VTA, filed on February 10, 2020 (“State Court
20 PAGA Action”).

21 1.2. “Claims Administrator” means Phoenix Settlement Administrators
22 Settlement Administrators.

23 1.3. “Claims Administration Costs” means the amount to be paid to the
24 third-party Claims Administrator from the Gross Settlement Amount for the
25 administration of the Settlement. The Claims Administration Costs amount is not to
26 exceed Seventeen Thousand Five Hundred Dollars and No Cents (\$17,500.00). Any
27 portion of the requested Claims Administration Costs that is not awarded to the
28 Claims Administrator shall be part of the Net Settlement Amount.

1 1.4. "Class Counsel" means Paul Haines, Sean Blakely and Alexandra
2 McIntosh of Haines Law Group, APC.

3 1.5. "Class Counsel Award" means reasonable attorneys' fees for Class
4 Counsel's litigation and resolution of the Actions in a maximum amount of Five
5 Hundred Thirty-Three Thousand Dollars and Thirty-Three Cents (\$533,333.33)
6 (33.33% of the Gross Settlement Amount). The Court shall determine the amount
7 of the Class Counsel Award, and it shall be paid from the Gross Settlement Amount.
8 Any portion of the requested Class Counsel Award that is not awarded to Class
9 Counsel shall be part of the Net Settlement Amount.

10 1.6. "Class Counsel Costs" means expenses incurred by Class Counsel for
11 Class Counsel's litigation and resolution of the Actions, not to exceed One hundred
12 Fifteen Thousand Dollars and No Cents (\$115,000.00). The Court shall determine
13 the amount of the Class Counsel Costs, and it shall be paid from the Gross Settlement
14 Amount. Any portion of the requested Class Counsel Costs that is not awarded to
15 Class Counsel shall be part of the Net Settlement Amount.

16 1.7. "Class Information" means information regarding Settlement Class
17 Members that Defendant will in good faith compile from its records and provide to
18 the Claims Administrator. Class Information shall be provided as a Microsoft Excel
19 spreadsheet and shall include, for each Settlement Class Member the following:
20 Settlement Class Member's full name; last known address; last known home
21 telephone number; social security number; the dates of termination for any
22 Settlement Class Member terminated on or after December 5, 2016; and the number
23 of PAGA and Wage Statement Workweeks. Because social security numbers are
24 included in the Class Information, the information shall be produced subject to a
25 protective order entered by the Court, for which the Claims Administrator shall,
26 pursuant to that protective order or otherwise by agreement with Defendant,
27 maintain the Class Information in confidence; access shall be limited to those with
28 a need to use the Class Information as part of the administration of the Settlement;

1 and transmission shall be through use of a secure link created and maintained by the
2 Administrator.

3 1.8. "Class Period" means the period from December 5, 2015 through and
4 including August 11, 2022.

5 1.9. "Aggrieved Employee Period" means the period from December 5,
6 2018 through and including August 11, 2022.

7 1.10. "Class Representative Enhancement Award" means the amount that the
8 Court authorizes to be paid to Plaintiffs, not to exceed Fifteen Thousand Dollars and
9 No Cents (\$15,000.00) to each Plaintiff (\$30,000.00 total), in recognition of
10 Plaintiffs' efforts and risks in assisting with the prosecution of the Actions. The Class
11 Representative Enhancement Award shall be paid from the Gross Settlement
12 Amount. Any portion of the requested Class Representative Enhancement Award
13 that is not awarded to Plaintiffs shall be part of the Net Settlement Amount.

14 1.11. "Compensable Work Weeks" means the number of work weeks
15 worked by each Settlement Class Member during the Class Period.

16 1.12. "PAGA Work Weeks" means the number of work weeks worked by
17 each Aggrieved Employee during the Aggrieved Employee Period.

18 1.13. "Court" means the United States District Court for the Central District
19 of California and/or the Superior Court of the State of California for the County of
20 Ventura.

21 1.14. "Defendant" means Lincare Inc., and all of its affiliated entities, related
22 entities, owners, officers, directors, members, parents, subsidiaries, affiliates,
23 employees, agents, successors and assigns.

24 1.15. "Defense Counsel" means David L. Cheng and Jennifer S. McGeorge
25 of Ford & Harrison, LLP.

26 1.16. "Effective Date" means the latest of the following dates: (i) the date
27 upon which the Court grants final approval of the Settlement if no Settlement Class
28 member files an objection to the Settlement; or (ii) if an objection to the Settlement

1 is filed, sixty-five (65) days after the date upon which the Court grants final approval
2 of the Settlement if no appeal is initiated; or (iii) if a timely appeal is initiated, the
3 Effective Date shall be the date of final resolution of that appeal (including any
4 requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
5 approval of the Settlement.

6 1.17. "Employee Taxes" means the employee's share of any and all
7 applicable federal, state, and local payroll taxes on the portion of Participating Class
8 Members' Individual Settlement Payment that constitutes wages. The Employee
9 Taxes will be paid out of the Net Settlement Amount.

10 1.18. "Employer Taxes" means the employer's share of any and all
11 applicable federal, state, and local payroll taxes on the portion of Participating Class
12 Members' Individual Settlement Payment that constitute wages. The Employer
13 Taxes will be paid by Defendant, and not out of the Gross Settlement Amount or Net
14 Settlement Amount.

15 1.19. "Final Approval Hearing" means the hearing held on the motion for
16 final approval of the Settlement.

17 1.20. "Final Approval Date" means the date on which the Court grants final
18 approval of the Settlement.

19 1.21. "Final Judgment" means the Court's entry of an order of judgment in
20 the Action(s) following the Court's final approval of the Settlement.

21 1.22. "Gross Settlement Amount" means the maximum amount Defendant
22 shall have to pay in connection with this Settlement (subject to the escalator
23 provision below), by way of a common fund, which shall be inclusive of all
24 Individual Settlement Payments to Participating Class Members, Class Counsel
25 Award, Class Counsel Costs, Claims Administrator Costs, Class Representative
26 Enhancement Award, and the PAGA Allocation. Subject to Court approval and the
27 terms of this Settlement, the Gross Settlement Amount Defendant shall be required
28 to pay is one million six hundred thousand dollars and no cents (\$1,600,000.00). No

1 portion of the Gross Settlement Amount will revert to Defendant, and the Settlement
2 does not require Participating Class Members to submit claims as a prerequisite to
3 receiving their Individual Settlement Payment. The Gross Settlement Amount is
4 based on a calculation of an estimated 63,961 Compensable Work Weeks as of
5 February 13, 2022. Defendant shall not be required to pay more than the Gross
6 Settlement Amount as long as the amount of Compensable Work Weeks does not
7 increase by more than 6,396 (10% of 63,961). Should the class size increase by
8 more than 6,396 Compensable Work Weeks, then the Gross Settlement Amount
9 shall increase proportionately — e.g., if the Compensable Work Weeks increase by
10 10,000 (approximately 15.63%) percent, the Gross Settlement Amount shall also
11 increase by 15.63% percent. Under no other circumstances shall Defendant be
12 required to pay more than the Gross Settlement Amount except as provided for in
13 this Settlement.

14 1.23. “Individual Settlement Payment” means the amount payable to each
15 Participating Class Member, as calculated pursuant to Paragraph 3.22 of the
16 Settlement, from the Net Settlement Amount. Checks for Individual Settlement
17 Payments will specifically indicate that they are void if not negotiated within one
18 hundred eight (180) days of their issuance.

19 1.24. “PAGA Allocation” means Fifty Thousand Dollars and No Cents
20 (\$50,000.00) for the compromise of claims for civil penalties brought under the
21 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

22 1.25. “LWDA PAGA Allocation” means Thirty-Seven Thousand Five
23 Hundred Dollars and No Cents (\$37,500.00), representing 75% of the PAGA
24 Allocation, and is the amount payable from the Gross Settlement Amount to
25 California’s Labor & Workforce Development Agency.

26 1.26. “Aggrieved Employee Settlement Payment” means the amount payable
27 to each Aggrieved Employee, as calculated pursuant to Paragraph 3.24 of the
28 Settlement, from the Aggrieved Employee PAGA Allocation. Checks for Aggrieved

1 Employee Settlement Payments will specifically indicate that they are void if not
2 negotiated within one hundred eight (180) days of their issuance.

3 1.27. “Aggrieved Employee PAGA Allocation” means Seventeen Thousand
4 Five Hundred Dollars and No Cents (\$17,500.00), representing 25% of the PAGA
5 Allocation, and is the amount payable from the Gross Settlement Amount to
6 Aggrieved Employees.

7 1.28. “Aggrieved Employees” shall mean any Settlement Class Member
8 employed in California at any time from December 5, 2018 through and including
9 August 11, 2022.

10 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less
11 the Class Counsel Award, the Class Counsel Costs, the Class Representative
12 Enhancement Award, the Claims Administration Costs, and the PAGA Allocation.
13 The Net Settlement Amount shall be distributed in its entirety to Participating Class
14 Members.

15 1.30. “Notice of Objection” means a written statement of objection to the
16 Settlement made and signed by a Settlement Class Member and includes the
17 following: (1) the full name of the Settlement Class Member; (2) the dates of
18 employment of the Settlement Class Member; (3) the last four (4) digits of the
19 Settlement Class Member’s Social Security number and/or the Employee ID
20 number; (4) the basis for the objection; and (5) whether the Settlement Class Member
21 intends to appear at the Final Approval Hearing.

22 1.31. “Notice of Settlement” or “Notice Packet” means the Notice of
23 Proposed Class Action Settlement and Notice of Settlement Award (substantially in
24 the form attached hereto as **Exhibit “A”**).

25 1.32. “Participating Class Members” means all Settlement Class Members
26 who do not submit a valid and timely Request for Exclusion.

27 1.33. “Parties” means Plaintiffs and Defendant collectively, and “Party” shall
28 mean any Plaintiff or Defendant, individually.

1 1.34. “Plaintiffs” means Antelma Chavez and Bernal Mazariegos.

2 1.35. “Preliminary Approval” or “Preliminary Approval Date” means the
3 date the Court enters the Preliminary Approval Order for the Settlement.

4 1.36. “Preliminary Approval Order” means the Proposed Order (filed
5 concurrently with this Settlement) for preliminary approval of the Settlement.

6 1.37. “Plaintiffs’ General Release” means any and all claims, demands,
7 liabilities, and causes of action of every nature and description whatsoever, known
8 or unknown, asserted or that have been asserted or that might have been asserted,
9 whether in tort, contract, or violation of any state or federal statute, rule or
10 regulation, and that they may have against Defendant and all Released Parties, and
11 arising out of, relating to, or in connection with Plaintiffs’ employment with
12 Defendant. Plaintiffs’ General Release includes claims for wages; back pay; front
13 pay; reinstatement; damages; or benefits. Plaintiffs’ General Release also releases
14 any and all claims they may have that arose prior to the date of this Settlement, and
15 hereby specifically waives and releases all claims, including, but not limited to,
16 those arising under 42 U.S.C. § 1983; Title VII of the Civil Rights Act of 1964, as
17 amended, the Civil Rights Act of 1991, 42 U.S.C. § 2000e *et. seq.*; the Equal Pay
18 Act; the Americans With Disabilities Act of 1990, as amended; the Rehabilitation
19 Act of 1973, as amended; the Age Discrimination in Employment Act (ADEA), as
20 amended; Sections 1981 through 1988 of Title 42 of the United States Code, as
21 amended; the Immigration Reform and Control Act, as amended; the Workers
22 Adjustment and Retraining Notification Act, as amended; the Occupational Safety
23 and Health Act, as amended; the Consolidated Omnibus Budget Reconciliation Act
24 (COBRA); the Family and Medical Leave Act; the National Labor Relations Act;
25 the Fair Credit Reporting Act; the Fair Labor Standards Act; the Labor Management
26 Relations Act; the American Recovery and Reinvestment Act of 2009; the Genetic
27 Information Nondiscrimination Act of 2008; and any and all state or local statutes,
28 ordinances, or regulations, as well as all claims arising under common law, federal,

1 state, or local law involving any tort, employment contract (express or implied),
2 public policy, wrongful discharge, or any other claim, including, but not limited to
3 claims under the California Health and Safety, Labor, Civil and Government Codes;
4 claims based upon the California Constitution; the Confidentiality of Medical
5 Information Act; the California Family Rights Act; and the California Fair
6 Employment & Housing Act, and recovery of attorney's fees and costs under any
7 applicable statute. Plaintiffs shall be deemed to have, and by operation of the Final
8 Judgment shall have, expressly waived and relinquished, to the fullest extent
9 permitted by law, the provisions, rights and benefits of Section 1542 of the
10 California Civil Code, or any other similar provision under federal or state law,
11 which Section provides:

12 **A general release does not extend to claims that the creditor or**
13 **releasing party does not know or suspect to exist in his or her favor**
14 **at the time of executing the release and that, if known by him or**
15 **her, would have materially affected his or her settlement with the**
16 **debtor or released party.**

17 This release excludes any current and/or future claims that cannot be waived as a
18 matter of law, including any claims for or related to workers compensation benefits,
19 any claims for unemployment insurance benefits, or any other claims that cannot be
20 released by law.

21 1.38. "Class Released Claims" means that Plaintiffs and all Participating
22 Class Members shall be deemed to have released Defendant and all Released Parties
23 from all claims in the Actions, as well as any and all claims that were asserted or
24 could have been asserted based on the facts pled in the Actions (including those
25 alleged in Plaintiffs' Letters to the California Labor & Workforce Development
26 Agency, the allegations of which are expressly incorporated herein, including any
27 and all claims arising from the facts alleged in the Action(s), including all wage and
28 hour claims for unpaid wages including minimum wages and overtime, failure to

1 pay wages during employment and upon separation of employment, meal and rest
2 break violations, wage statement violations, failure to reimburse all necessary
3 business expenses, and recovery of restitution, disgorgement, injunctive relief,
4 declaratory relief, conversion, unjust enrichment, civil and statutory penalties,
5 interest, liquidated damages, and claims under California Labor Code sections 201-
6 203, 204, 210, 212-213, 218.6, 223, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1,
7 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699.5, 2802, 2804, applicable
8 Industrial Welfare Commission Wage Orders, claims under California Business &
9 Professions Code sections 17200-17208, Civil Code §§3287 and 3289, Code of
10 Civil Procedure §1021.5, and recovery of attorney's fees and costs under any
11 applicable statute.

12 1.39. "PAGA Released Claims" means that Plaintiffs, the State of California,
13 and, all Aggrieved Employees, regardless of whether they opt out from the
14 Settlement, shall be deemed to have released Defendant and all Released Parties
15 from any and all claims brought pursuant to the California Private Attorneys
16 General Act of 2004, Cal. Lab. Code sections 2698, *et seq.*, based on the claims that
17 were asserted or could have been asserted based on the facts pled in the Actions,
18 including those alleged in Plaintiffs' Letters to the California Labor & Workforce
19 Development Agency, the allegations of which are expressly incorporated herein,
20 including, without limitation, any and all claims arising from the facts alleged in
21 the Action(s), including all wage and hour claims for unpaid wages including
22 minimum wages and overtime, failure to pay wages during employment and upon
23 separation of employment, meal and rest break violations, wage statement
24 violations, failure to reimburse all necessary business expenses, and recovery of
25 civil penalties for violations of California Labor Code sections 201-203, 204, 210,
26 212-213, 218.6, 223, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1194,
27 1194.2, 1197, 1197.1, 1198, 2698-2699.5, 2802, 2804, applicable Industrial
28 Welfare Commission Wage Orders, claims under California Business &

1 Professions Code sections 17200-17208, Civil Code §§3287 and 3289, Code of
2 Civil Procedure §1021.5, and recovery of attorney's fees and costs under any
3 applicable statute.

4 1.40. "Released Parties" means Defendant and all of its affiliated entities,
5 related entities, owners, officers, directors, members, parents, subsidiaries,
6 affiliates, employees, agents, successors and assigns.

7 1.41. "Request for Exclusion" means a request by any Settlement Class
8 Member to exclude themselves from the Settlement. Any Settlement Class member
9 who wishes to opt out of the Settlement must complete and mail a Request for
10 Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar
11 days of the date of the initial mailing of the Notice Packets (the "Response
12 Deadline"). The Notice Packet shall state that Settlement Class members who wish
13 to exclude themselves from the Settlement must prepare and submit a Request for
14 Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain
15 the name, address, telephone number and the last four digits of the Social Security
16 number of the Settlement Class member; (2) contain a statement that the Settlement
17 Class member wishes to be excluded from the Settlement; (3) be signed by the
18 Settlement Class member; and (4) be postmarked by the Response Deadline and
19 mailed to the Settlement Administrator at the address specified in the Class Notice.
20 If the Request for Exclusion does not contain the information listed in (1)-(3), it will
21 not be deemed valid for exclusion from the Settlement, except a Request for
22 Exclusion not containing a Settlement Class member's telephone number and/or last
23 four digits of the Social Security number will be deemed valid. The date of the
24 postmark on the Request for Exclusion shall be the exclusive means used to
25 determine whether a Request for Exclusion has been timely submitted. Any
26 Settlement Class member who requests to be excluded from the Settlement Class
27 will not be entitled to any recovery under this Settlement Agreement (except for any
28 amount due to him or her from the PAGA Amount, if applicable).

1 1.42. "Response Deadline" means the date sixty (60) days after the Claims
2 Administrator mails Notice Packets to Settlement Class Members, and shall be the
3 last date on which Settlement Class Members may: (a) postmark Requests for
4 Exclusion from the Settlement, or (b) postmark Objections to the Settlement.

5 1.43. "Settlement" means this Joint Stipulation of Class Action Settlement
6 and Release.

7 1.44. "Settlement Class Member(s)" or "Settlement Class" means all non-
8 exempt, hourly workers who were employed by Lincare Inc. in California at any
9 time from December 5, 2015 through and including August 11, 2022. The
10 Settlement Class, however, specifically excludes any employee who previously
11 brought a lawsuit against Lincare Inc. and which subsequently resulted in settlement.

12 **2. RECITALS**

13 2.1. Class Certification, Remand and Amendment to Complaint. The
14 Parties stipulate and agree to the class certification of the Settlement Class for
15 purposes of this Settlement only. As a condition to Settlement, the Parties stipulate
16 and agree to remand of the Federal Class Action Case to Ventura County Superior
17 Court, Should the Settlement not become final and effective, class certification shall
18 immediately be set aside (subject to further proceedings on motion of any party to
19 certify or deny certification thereafter). The Parties' willingness to stipulate to class
20 certification as part of the Settlement shall have no bearing on and shall not be
21 admissible in or considered in connection with, the issue of whether a class should
22 be certified in a non-settlement context in this Action(s), and shall have no bearing
23 on and shall not be admissible or considered in connection with the issue of whether
24 a class should be certified in any other lawsuit. In addition, should the Settlement
25 not become final and effective, meaning the Court denies final approval with
26 prejudice, within fourteen (14) days of the Settlement not becoming final and
27 effective, Plaintiffs shall file an amended complaint substantially in the form
28 attached hereto as **Exhibit B**.

1 2.2. Procedural History. On December 5, 2019, Plaintiff Antelma Chavez,
2 a former employee of Defendant, filed a Class Action Complaint in the Superior
3 Court of the state of California for the County of Ventura as a putative class action
4 on behalf of all current and former non-exempt California employees of Defendant,
5 during the period of December 5, 2015 “through the present.” Plaintiff Chavez
6 alleged that Defendant Lincare Inc. and former Defendant Lincare Holdings Inc.: (1)
7 failed to provide lawful meal periods, (2) failed to provide lawful rest periods, (3)
8 failed to reimburse all necessary business expenses, (4) failed to provide accurate
9 itemized wage statements; (5) failed to properly and timely pay wages upon
10 termination of employment; and (6) engaged in unfair competition. Plaintiff Chavez
11 sought recovery under the California Labor Code, the applicable Industrial Welfare
12 Commission Wage Order, and the California Business & Professions Code. On
13 March 2, 2020, Defendant filed a notice of removal, removing the lawsuit entitled
14 *Antelma Chavez, as an individual and on behalf of all others similarly situated v.*
15 *Lincare Inc., a Delaware corporation; Lincare Holdings Inc., a Delaware*
16 *corporation; and DOES 1 through 100*, Ventura County Superior Court Case No.
17 56-2019-00536955-CU-OE-VTA (“State Court Class Action Case”) to the United
18 States District Court for the Central District of California, and the case was then
19 issued USDC Case No. 2:20-cv-02043 JWH- E (“Federal Class Action Case”). On
20 February 10, 2020 Plaintiff Chavez filed a second Action in the Superior Court of
21 California for the County of Ventura under the Labor Code Private Attorneys
22 General Act (“PAGA”), which was issued Ventura County Superior Court Case No.
23 56-2020-00539898-CU-OE-VTA (“State Court PAGA Action”). After meet and
24 confer discussions between the Parties, Defendant Lincare Holdings Inc. was
25 dismissed as a Defendant to the Actions, the State Court PAGA Action was
26 dismissed without prejudice, and the Parties stipulated to the filing of First and
27 Second Amended Complaints in the Federal Class Action case. The Second
28 Amended Complaint, which is the operative Complaint, was filed on May 10, 2021.

1 The Second Amended Complaint added Plaintiff Bernal Mazariegos as an additional
2 Plaintiff, and alleges claims for: (1) failure to provide lawful meal periods, (2) failure
3 to provide lawful rest periods, (3) failure to reimburse all necessary business
4 expenses, (4) failure to provide accurate itemized wage statements; (5) failure to
5 properly and timely pay wages upon termination of employment, including for the
6 untimely payment of all minimum and/or overtime wages due; (6) unfair
7 competition, and (7) Civil Penalties Under the PAGA.

8 2.3. Settlement Negotiations. On May 10, 2022, the Parties participated in
9 a private mediation session with mediator Steven Serratore, a well-respected,
10 experienced mediator in the field of wage and hour class actions. Prior to the
11 mediation, Class Counsel conducted extensive discovery and investigation during
12 the prosecution of the Action(s). The discovery and investigation included, among
13 other things: (1) inspection and analysis of employee documents and data, time and
14 payroll records, employment policies and procedures, and other relevant documents;
15 (2) evaluation of legal positions taken by Defendant; (3) evaluation of potential
16 class-wide damages and PAGA penalties; (4) review and research of applicable law
17 with respect to the claims and potential defenses brought by Defendant; (5)
18 Depositions of the Plaintiffs, Defendant's Persons Most Knowledgeable, and
19 additional defense witnesses; and (6) written discovery responses. Class Counsel
20 has vigorously prosecuted the Actions, and Defendant has vigorously defended it.
21 The Parties have engaged in sufficient discovery and investigation to assess the
22 relative merits of the claims and contentions of the Parties. Based on this
23 information and the settlement discussions during the mediation conducted at arm's
24 length, the Parties came to an agreement in principle on May 13, 2022. The
25 settlement is the result of an informed and detailed evaluation of the potential
26 liability of total exposure in relation to the costs and risks associated with continued
27 litigation of the Actions.

28 2.4. Benefits of Settlement to Settlement Class Members. Plaintiffs and

1 Class Counsel recognize the length of continued proceedings necessary to litigate
2 their disputes through certification, trial, and any possible appeal. Plaintiffs and
3 Class Counsel have also taken into account the uncertainty and risk of the outcome
4 of further litigation, the difficulties and delays inherent in such litigation, including,
5 but not limited to, the risks related to a contested motion for class certification, and
6 the risks related to liability raised by the issues in this case. Plaintiffs and Class
7 Counsel are also aware of the burdens of proof necessary to establish liability for the
8 claims asserted in the Actions and the difficulties in establishing damages for the
9 Settlement Class Members. Plaintiffs and Class Counsel have also taken into
10 account Defendant's agreement to enter into a settlement that confers substantial
11 relief upon Settlement Class Members. Based on the foregoing, Plaintiffs and Class
12 Counsel have determined that this Settlement is a fair, adequate, and reasonable, and
13 is in the best interests of the Settlement Class Members.

14 2.5. No Admissions. The Parties understand and agree that this Settlement
15 is the result of a good faith compromise of disputed claims and allegations.
16 Defendant denies any and all claims alleged in the Actions and denies all
17 wrongdoing whatsoever. This Agreement is not a concession or admission, and shall
18 not be used against Defendant as an admission or indication with respect to any claim
19 of any fault, concession or omission by Defendant, regardless of whether or not the
20 Settlement is finally approved and/or consummated. In particular, but without
21 limiting the generality of the foregoing, nothing about this Settlement shall be
22 offered or construed as an admission that Defendant has violated any of its
23 obligations under the California Labor Code, or of liability in general, or any
24 wrongdoing, impropriety, responsibility, or fault whatsoever on the part of
25 Defendant and/or the Released Parties. In addition, this Settlement shall not be
26 offered or admissible in evidence against any of the Parties or any of the Released
27 Parties, except in any action or proceeding brought by or against Plaintiffs, or
28 Defendant to enforce its terms, or by Defendant in defense of any claims brought by

1 Plaintiffs. Further, the negotiation, terms, and entry of this Stipulation shall remain
2 subject to the provisions of Federal Rule of Evidence 408, and any other analogous
3 California state rules of evidence that are applicable.

4 2.7. Settlement Class Members' Claims. Plaintiffs claim that the Released
5 Claims have merit and give rise to liability on the part of Defendant. This Settlement
6 is a compromise of disputed claims. Nothing contained in this Settlement and no
7 documents referred to herein, nor any action taken to carry out this Settlement may
8 be construed or used as an admission by or against the Settlement Class Members or
9 Class Counsel as to the merits or lack thereof of the claims asserted.

10 3. TERMS OF SETTLEMENT

11 The Parties agree as follows:

12 3.1. Binding Settlement. This Settlement shall bind the Parties and all
13 Participating Class Members, subject to the terms and conditions hereof and the
14 Court's approval.

15 3.2. Maximum Amount Payable. Under the terms of this Settlement, the
16 maximum amount payable by Defendant (subject to the escalator language included
17 in section 1.22) shall be the Gross Settlement Amount of one million six hundred
18 thousand dollars and no cents (\$1,600,000.00), which includes Individual Settlement
19 Payments to Participating Class Members, the Class Counsel Award, Class Counsel
20 Costs, Claims Administrator Costs, Class Representative Enhancement Award,
21 Employee Taxes, and the PAGA Allocation. Employer Taxes due on wage
22 payments from the maximum amount payable shall be paid separately by Defendant,
23 in addition to the maximum amount payable.

24 3.3. Releases As To Plaintiffs, Participating Class Members and All
25 Settlement Class Members. As of the Effective Date, all Participating Class
26 Members, including Plaintiffs will be deemed to have fully, finally and forever
27 released, settled, compromised, relinquished, and discharged the Released Parties
28 from the Class Released Claims for the period of December 5, 2015 through and

1 including August 11, 2022. Likewise, as of the Effective Date, the Plaintiffs' General
2 Release and the PAGA Released Claims shall become effective.

3 3.4. Tax Liability. The Parties make no representations as to the tax
4 treatment or legal effect of the payments called for hereunder, and Plaintiffs and
5 Settlement Class Members are not relying on any statement or representation by the
6 Parties in this regard. Plaintiffs and Settlement Class Members understand and agree
7 that they will be responsible for the payment of any taxes and penalties assessed on
8 the payments described herein and will hold the Released Parties free and harmless
9 from and against any claims resulting from treatment of such payments as non-
10 taxable damages, including the treatment of such payment as not subject to
11 withholding or deduction for payroll and employment taxes. Plaintiffs are advised
12 to consult with competent tax counsel in connection with this Settlement, and
13 Plaintiffs are not relying on any statement or representation by Defendant in this
14 regard. Defendant's share of Employer Taxes shall be paid separately from the
15 Gross Settlement Amount.

16 3.5. Circular 230 Disclaimer. The Parties acknowledge and agree that (1)
17 no provision of this Settlement, and no written communication or disclosure between
18 or among the Parties, Class Counsel or Defense Counsel and other advisers, is or
19 was intended to be, nor shall any such communication or disclosure constitute or be
20 construed or be relied upon as, tax advice within the meaning of United States
21 Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the
22 acknowledging party (a) has relied exclusively upon his, her, or its own, independent
23 legal and tax counsel for advice (including tax advice) in connection with this
24 Settlement, (b) has not entered into this Settlement based upon the recommendation
25 of any other party or any attorney or advisor to any other party, and (c) is not entitled
26 to rely upon any communication or disclosure by any attorney or advisor to any other
27 party to avoid any tax penalty that may be imposed on the acknowledging party; and
28 (3) no attorney or advisor to any other party has imposed any limitation that protects

1 the confidentiality of any such attorney's or adviser's tax strategies (regardless of
2 whether such limitation is legally binding) upon disclosure by the acknowledging
3 party of the tax treatment or tax structure of any transaction, including any
4 transaction contemplated by this Settlement.

5 3.6. Settlement Approval and Implementation Procedures. As part of this
6 Settlement, the Parties agree to the following procedures for obtaining the Court's
7 preliminary approval of the Settlement, certifying the Settlement Class, notifying
8 Settlement Class Members of the Settlement, obtaining the Court's final approval of
9 the Settlement, and processing the Individual Settlement Payments and Aggrieved
10 Employee Settlement Payments.

11 3.7. Preliminary Approval and Certification. As soon as practicable after
12 execution of this Settlement, the Parties will jointly submit this Settlement to the
13 Court for its preliminary approval. Such submission will include this Settlement,
14 the proposed Notice Packet, the proposed Preliminary Approval Order, and any,
15 memoranda and evidence as may be necessary for the Court to determine that this
16 Settlement is fair, adequate, and reasonable. The Parties agree to request the Court
17 to enter an order conditionally certifying the Settlement Class after the preliminary
18 approval hearing, in accordance with Rule 23 and or California Rules of Court, Rule
19 3.769(c). The motion for preliminary approval of the Settlement shall also include
20 a declaration from Class Counsel that it has provided notice to the California Labor
21 & Workforce Development Agency as required under Cal. Lab. Code section
22 2699(l)(2).

23 3.8. Class Information. No more than fifteen (15) calendar days after the
24 entry of the Preliminary Approval Order, Defendant shall provide the Claims
25 Administrator with the Class Information for purposes of mailing Notice Packets to
26 Settlement Class Members.

27 3.9. Notice by First Class U.S. Mail. Upon receipt of the Class Information,
28 the Claims Administrator will perform a search on the National Change of Address

1 database to update the Settlement Class Members' addresses. No more than ten (10)
2 calendar days after receiving the Class Information from Defendant, as provided
3 herein, the Claims Administrator shall mail copies of the Notice Packet in English
4 and Spanish to all Settlement Class Members by regular First-Class U.S. Mail
5 (attached hereto as Exhibits A and B, to be translated by the Claims Administrator).
6 The Claims Administrator shall exercise its best judgment to determine the current
7 mailing address for each Settlement Class Member. The address identified by the
8 Claims Administrator as the current mailing address shall be presumed to be the best
9 mailing address for each Settlement Class Member. It will be conclusively
10 presumed that if an envelope so mailed has not been returned within twenty (20)
11 days of the mailing that the Settlement Class Member received the Notice Packet.

12 3.10. Undeliverable Notices. Any Notice Packets returned to the Claims
13 Administrator as undeliverable on or before the Response Deadline shall be re-
14 mailed to the forwarding address affixed thereto.

15 3.11. For each Settlement Class Member whose Notice Packet is returned,
16 there will be one (1) skip trace by the Claims Administrator. If an updated mailing
17 address is identified, the Claims Administrator shall resend the Notice Packet to the
18 Settlement Class Member. One (1) supplemental Notice Packet shall be mailed to
19 each Settlement Class Member whose original Notice Packet is returned as
20 undeliverable to the Claims Administrator. Such re-mailing shall be made within
21 five (5) business days of the Claims Administrator receiving notice that the
22 respective Notice Packet was undeliverable. Reasonable requests by the Claims
23 Administrator for additional information in Defendant's possession must be
24 responded to within a reasonable amount of time by counsel for Defendant. It is the
25 intent of the Parties that reasonable means be used to locate the Settlement Class
26 Members and apprise them of their rights.

27 3.12. Settlement Class Members to whom Notice Packets are re-sent after
28 having been returned undeliverable to the Claims Administrator shall have an

1 additional fourteen (14) calendar days to mail the Request for Exclusion or a Notice
2 of Objection. Notice Packets that are re-sent shall inform the recipient of this
3 adjusted deadline. The date of the postmark on the return envelope shall be the
4 exclusive means used to determine whether a Settlement Class Member has returned
5 his or her Request for Exclusion on or before the adjusted deadline. It will be
6 conclusively presumed that if an envelope so mailed has not been returned within
7 twenty (20) days of the mailing, that the Settlement Class Member received the
8 Notice Packet. If a Settlement Class Member's Notice Packet is returned to the
9 Claims Administrator more than once as undeliverable, then an additional Notice
10 Packet shall not be re-mailed.

11 3.13. Compliance with the procedures specified in paragraphs 3.9 through
12 3.12 of this Settlement shall constitute due and sufficient notice to Settlement Class
13 Members of this Settlement and shall satisfy the requirement of due process.
14 Nothing else shall be required of, or done by, the Parties, Class Counsel, and/or
15 Defense Counsel to provide notice of the proposed Settlement.

16 3.14. Disputes. Settlement Class Members will have the opportunity during
17 the sixty (60) day Response Deadline, should they disagree with Defendant's records
18 regarding their days worked during the Class Period, to provide documentation
19 and/or an explanation to show contrary days worked. Absent evidence to the
20 contrary, Defendant's records will be presumed correct. If there is a dispute, the
21 Claims Administrator will notify and consult with the Parties to determine whether
22 an adjustment is warranted. The Claims Administrator shall determine the eligibility
23 for, and the amounts of, any Individual Settlement Payments under the terms of this
24 Settlement. The Claims Administrator's determination of the eligibility for and
25 amount of any Individual Settlement Payment shall be binding upon the Settlement
26 Class Member and the Parties. The Claims Administrator shall inform Class
27 Counsel in a timely fashion as to the submission and resolution of all disputes.

28 3.15. Exclusions (Opt-Outs). The Notice Packet shall state that Settlement

1 Class Members who wish to exclude themselves from the Settlement must submit a
2 Request for Exclusion by the Response Deadline. The Request for Exclusion: (1)
3 must contain the name, address, and the last four (4) digits of the Social Security
4 number of the Settlement Class Member requesting exclusion, (2) must be signed by
5 the Settlement Class Member; and (3) must be postmarked by the Response Deadline
6 and returned to the Claims Administrator at the specified address. If the Request for
7 Exclusion does not contain the information listed in (1)-(3), it will not be deemed
8 valid for exclusion from this Settlement. The date of the postmark on the return-
9 mailing envelope shall be the exclusive means used to determine whether a Request
10 for Exclusion has been timely submitted. Any Settlement Class Member who
11 requests to be excluded from the Settlement will not be entitled to any recovery
12 under the Settlement and will not be bound by the terms of the Settlement, unless
13 the employee worked during the PAGA Period, for which they will receive their
14 Aggrieved Employee Settlement Payment regardless of whether they opt out of the
15 Settlement. Settlement Class Members who receive a Notice Packet, but fail to
16 submit a valid and timely Request for Exclusion on or before the Response Deadline
17 shall be bound by all terms of the Settlement and any Final Judgment entered in the
18 Action(s) if the Settlement is approved by the Court. At no time shall any of the
19 Parties or their counsel seek to solicit or otherwise encourage members of the
20 Settlement Class to submit Requests for Exclusion from the Settlement. Class
21 Counsel shall not represent any Settlement Class Member with respect to any such
22 Requests for Exclusion. Settlement Class Members who submit a valid Request for
23 Exclusion may not also submit a Notice of Objection. No later than seven (7)
24 calendar days after the Response Deadline, the Claims Administrator shall provide
25 Defense Counsel with a final list of the Settlement Class Members who have timely
26 submitted a Request for Exclusion.

27 3.16. Objections. The Notice Packet shall state that Settlement Class
28 Members who wish to object to the Settlement must not submit a Request for

1 Exclusion and can either submit a written statement of objection (“Notice of
2 Objection”) by the Response Deadline to the Claims Administrator and/or appear at
3 the Final Approval Hearing. The Notice of Objection must be signed by the
4 Settlement Class Member and state: (1) the full name of the Settlement Class
5 Member; (2) the dates of employment of the Settlement Class Member; (3) the last
6 four (4) digits of the Settlement Class Member’s Social Security number and/or the
7 Employee ID number; (5) the basis for the objection; and (6) whether the Settlement
8 Class Member intends to appear at the Final Approval Hearing. The Notice of
9 Objection must be postmarked by the Response Deadline and returned to the Claims
10 Administrator at the specified address. Within five (5) days of receiving a Notice of
11 Objection from a Settlement Class Member, the Claims Administrator shall forward
12 the Notice of Objection to Class Counsel and Defense Counsel. Class Counsel will
13 thereafter lodge the Settlement Class Member’s Notice of Objection with the Court.
14 Settlement Class Members who submit a Request for Exclusion are not entitled to
15 object to the Settlement. At no time shall any of the Parties or their counsel seek to
16 solicit or otherwise encourage Settlement Class Members to file or serve written
17 objections to the Settlement or appeal from the Final Judgment. Class Counsel shall
18 not represent any Settlement Class Members with respect to any such objections.

19 3.17. Plaintiffs’ Participation. By executing this Settlement, Plaintiffs hereby
20 stipulate that they will not object to or exclude themselves from the Settlement in
21 any way.

22 3.18. No Solicitation of Settlement Objections or Exclusions. The Parties
23 and their counsel agree to use their best efforts to carry out the terms of this
24 Settlement. At no time shall any of the Parties or their counsel seek to solicit or
25 otherwise encourage Settlement Class Members to submit either written objections
26 to the Settlement or Requests for Exclusion from the Settlement, or to appeal from
27 the Court’s Final Judgment.

28 3.19. Funding of the Gross Settlement Amount. This is a non-reversionary

1 Settlement in which Defendant is required to pay the entire Gross Settlement
2 Amount. No portion of the Gross Settlement Amount will revert to Defendant.
3 Defendant is separately and solely responsible for any employer payroll taxes owed
4 as a result of the Settlement. By no later than sixty (60) calendar days after the
5 Effective Date, Defendant shall provide to the Claims Administrator the Gross
6 Settlement Amount. No payments from the Gross Settlement Amount shall be made
7 before the Gross Settlement Amount is fully funded. No release in this Settlement
8 shall be effective until the Gross Settlement Amount is fully funded.

9 3.20. Accounting by Claims Administrator. No more than five (5) business
10 days after the Gross Settlement Amount is fully funded, the Claims Administrator
11 will provide the Parties with an accounting of all anticipated payments from the
12 Gross Settlement Amount. The Net Settlement Amount shall be calculated by
13 deducting from the Gross Settlement Amount payments for (1) Class Representative
14 Enhancement Award, as specified in this Settlement and approved by the Court; (2)
15 Class Counsel Award, as specified in this Settlement and approved by the Court; (3)
16 Class Counsel Costs, as specified in this Settlement and approved by the Court; (4)
17 Claims Administration Costs, as specified in this Settlement and approved by the
18 Court; and (5) the PAGA Allocation, as specified in this Settlement and approved
19 by the Court. The Net Settlement Amount shall be distributed in Individual
20 Settlement Payments in accordance with Paragraphs 3.21 and 3.22.

21 3.21. Individual Settlement Payments. Each Participating Class Member
22 shall be eligible to receive an Individual Settlement Payment, which is a share of the
23 Net Settlement Amount, based on the number of Compensable Work Weeks worked
24 by the Participating Class Member during the Class Period. Individual Settlement
25 Payments shall be paid pursuant to the formula set forth in Paragraph 3.22 below.
26 Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to
27 Participating Class Members' last known mailing address no later than fifteen (15)
28 calendar days after the Gross Settlement Amount is fully funded. Individual

1 Settlement Payments will specifically indicate that they are void if not negotiated
2 within one hundred eight (180) days of their issuance. Individual Settlement
3 Payments reflect settlement of a dispute regarding wages, interest, and penalties.
4 Individual Settlement Payments will be allocated as follows: ten percent (10%) as
5 wages; and ninety percent (90%) as interest and penalties. The “wage” portion of
6 each Individual Settlement Payment will be reduced by any Employee Taxes. The
7 Claims Administrator shall issue the appropriate tax documents associated with the
8 Individual Settlement Payments, including an IRS Form W-2 for the amounts
9 allocated as “wages” and an IRS Form 1099 for the amounts allocated as “interest”
10 or “penalties.”

11 3.22. Individual Settlement Payment Formula.

12 a. From the Net Settlement Amount, the Settlement Administrator
13 will calculate each Participating Class Member’s Individual
Settlement Payment based on the following formula:

14 i. Wage Statement Amount: 15% of the Net Settlement Amount
15 shall be designated as the “Wage Statement Amount.” Each
16 Participating Class Member who was employed by Defendant
17 at any time between December 5, 2018 to the end of the Class
18 Period, shall receive a portion of the Wage Statement Amount
pursuant to the same formula set forth in Paragraph 3.24
below.

19 ii. Waiting Time Amount: 15% of the Net Settlement Amount
20 shall be designated as the “Waiting Time Amount.” The
21 Waiting Time Amount shall be distributed in equal, pro-rata
22 shares to each Participating Class Member who separated their
23 employment from Defendant at any time from December 5,
2016 to the end of the Class Period.

24 iii. The remainder (70%) of the Net Settlement Amount will be
25 distributed to each Participating Class Member based on their
26 proportionate number of Compensable Work Weeks worked
27 during the Class Period, by multiplying the remaining Net
28 Settlement Amount by a fraction, the numerator of which is
the Participating Class member’s total Compensable Work
Weeks worked during the Class Period, and the denominator

1 of which is the total number of Compensable Work Weeks
2 worked by all Participating Class members during the Class
3 Period.

4 The Claims Administrator will reduce each Individual Settlement Payment by
5 Employee Taxes, which will be based on the most recent W-4 form on record
6 for Participating Class Members.

7 3.23. Aggrieved Employee Settlement Payments. Each Aggrieved Employee
8 shall be eligible to receive an Aggrieved Employee Settlement Payment, which is a
9 share of the Aggrieved Employee PAGA Allocation, based on the number of PAGA
10 Work Weeks worked by the Aggrieved Employee during the Aggrieved Employee
11 Period. Aggrieved Employee Settlement Payments shall be paid pursuant to the
12 formula set forth in Paragraph 3.24 below. Aggrieved Employee Settlement
13 Payments shall be mailed by regular First-Class U.S. Mail to Participating Class
14 Members' last known mailing address no later than fifteen (15) calendar days after
15 the Gross Settlement Amount is fully funded. Aggrieved Employee Settlement
16 Payments will specifically indicate that they are void if not negotiated within one
17 hundred eight (180) days of their issuance. Aggrieved Employee Settlement
18 Payments reflect settlement of a dispute regarding civil penalties, and therefore shall
19 be treated as 1099 income. The Claims Administrator shall issue the appropriate tax
20 documents associated with the Aggrieved Employee Settlement Payments, including
21 an IRS Form 1099.

22 3.24. Aggrieved Employee Settlement Payment Formula. Defendant will
23 calculate the PAGA Work Weeks for each Aggrieved Employee. The Claims
24 Administrator will calculate a Payment Ratio from the Aggrieved Employee PAGA
25 Allocation for each Aggrieved Employee by dividing the respective PAGA Work
26 Weeks by the total PAGA Work Weeks for all Aggrieved Employees. Each
27 Aggrieved Employee's Payment Ratio will then be multiplied by the Aggrieved
28 Employee PAGA Allocation to determine each Aggrieved Employee Settlement

1 Payment.

2 3.25. The Claims Administrator will be responsible for issuing to Plaintiffs,
3 Aggrieved Employees, Participating Class Members, and Class Counsel W-2's,
4 1099's, or other tax forms as may be required by law for all amounts paid pursuant
5 to this Settlement. The Claims Administrator will also be responsible for forwarding
6 all payroll taxes and penalties to the appropriate government authorities. Defendant
7 shall be responsible for Employer Taxes. Defendant shall have no responsibility for
8 deciding the validity of any Individual Settlement Payment, Aggrieved Employee
9 Settlement Payment, or any other payments made pursuant to this Settlement, shall
10 have no involvement in or responsibility for the determination or payment of
11 Employee Taxes, and shall have no liability for any errors made with respect to such
12 Employee Taxes.

13 3.26. No benefit, including but not limited to pension benefits, shall increase
14 or accrue as a result of any payment made pursuant to this Settlement.

15 3.27. If a check for an Individual Settlement Payment or Aggrieved
16 Employee Settlement Payment is returned to the Claims Administrator as
17 undeliverable, the Claims Administrator shall promptly attempt to obtain a valid
18 mailing address by performing a skip trace search. If another address is identified,
19 the Claims Administrator shall mail the check to the newly identified address. If an
20 Individual Settlement Payment or Aggrieved Employee Settlement Payment check
21 is returned to the Claims Administrator a second time as undeliverable, the Claims
22 Administrator shall not attempt any further re-mailing of that check. Any settlement
23 checks that remain uncashed one hundred eighty (180) or more calendar days after
24 issuance shall be voided; and any remainder of the Net Settlement Fund and
25 unclaimed and uncashed funds shall be distributed in accordance with California
26 Code of Civil Procedure section 384, which provides, in pertinent part, as follows:

27 “. . . before the entry of a judgment in a class action established pursuant
28 to Section 382 that provides for the payment of money to members of
the class, the court shall determine the total amount that will be payable

1 to all class members if all class members are paid the amount to which
2 they are entitled pursuant to the judgment. The court shall also set a date
3 when the parties shall report to the court the total amount that was
4 actually paid to the class members. After the report is received, the court
5 shall amend the judgment to direct the defendant to pay the sum of the
6 unpaid residue or unclaimed or abandoned class member funds, plus any
7 interest that has accrued thereon, to nonprofit organizations or
8 foundations to support projects that will benefit the class or similarly
9 situated persons, or that promote the law consistent with the objectives
10 and purposes of the underlying cause of action, to child advocacy
11 programs, or to nonprofit organizations providing civil legal services to
12 the indigent. The court shall ensure that the distribution of any unpaid
13 residue or unclaimed or abandoned class member funds derived from
14 multistate or national cases brought under California law shall provide
15 substantial or commensurate benefit to California consumers. For
16 purposes of this subdivision, "judgment" includes a consent judgment,
17 decree, or settlement agreement that has been approved by the court."
18 (Cal. Code of Civ. Proc. §384(b)).

19 Any funds payable to Settlement Class members whose checks were not cashed
20 within 180 days after mailing will escheat to the California State Controller pursuant
21 to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name
22 of the Settlement Class member to whom the check was issued, until such time that
23 they claim their property.

24 3.28. Class Representative Enhancement Awards. Defendant agrees not to
25 oppose or object to any application or motion by Plaintiffs for a Class Representative
26 Enhancement Award, not to exceed Fifteen Thousand Dollars and No Cents
27 (\$15,000.00) for each of the named Plaintiffs, Antelma Chavez and Bernal
28 Mazariegos, as consideration for Plaintiffs' time and effort in bringing and
prosecuting this matter. The Class Representative Enhancement Award shall be paid
to Plaintiffs from the Gross Settlement Amount no later than fifteen (15) calendar
days after the Gross Settlement Amount is fully funded. The Claims Administrator
shall issue an IRS Form 1099 — MISC to Plaintiffs for their Class Representative
Enhancement Award. Plaintiffs shall be solely and legally responsible for payment
of all applicable taxes on their Class Representative Enhancement Awards and shall
hold Defendant harmless from any claim or liability for taxes, penalties, or interest
arising as a result of the Class Representative Enhancement Award(s). The Class

1 Representative Enhancement Award(s) shall be in addition to Plaintiffs' Individual
2 Settlement Payment(s) as a Participating Class Member. In the event that the Court
3 awards lesser amounts than the Class Representative Enhancement Awards
4 requested, then any portion of the requested amounts not awarded to Plaintiffs shall
5 be added to the Net Settlement Amount. Plaintiffs shall not have the right to revoke
6 their agreement to the Settlement on the grounds the Court did not approve any or
7 all of their request for a Class Representative Enhancement Award.

8 3.29. Class Counsel Award and Costs. Defendant agrees not to oppose or
9 object to any application or motion by Class Counsel for a Class Counsel Award,
10 currently anticipated not to exceed Five Hundred Thirty-Three Thousand Thirty-
11 Three dollars and Thirty-Three Cents (\$533,333.33) and Class Counsel Costs not to
12 exceed One hundred Fifteen Thousand Dollars and No Cents (\$115,000.00) from
13 the Gross Settlement Amount. The Class Counsel Award and Class Counsel Costs
14 shall be paid no later than fifteen (15) calendar days after the Gross Settlement
15 Amount is fully funded. Class Counsel shall be solely and legally responsible to pay
16 all applicable taxes on the payments made pursuant to this paragraph. The Claims
17 Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the
18 payments made pursuant to this paragraph. This Settlement is not contingent upon
19 the Court awarding Class Counsel any particular amount in attorneys' fees and costs.
20 Any amount requested by Class Counsel for the Class Counsel Award and Class
21 Counsel Costs and not granted by the Court shall be part of the Net Settlement
22 Amount.

23 3.30. Defendant's Option to Terminate Settlement. If, after the Response
24 Deadline and before the Final Approval Hearing, ten percent or more of the number
25 of Settlement Class Members submit timely and valid Requests for Exclusion from
26 the Settlement, Defendant shall have, in its sole discretion, the option to terminate
27 this Settlement. Defendant shall exercise this option to terminate, if it wishes, at
28 least sixteen (16) court days prior to the Final Approval Hearing. If Defendant

1 decides to void the Settlement, then the Settlement and conditional class certification
2 shall be considered void, and neither the Settlement, conditional class certification,
3 nor any of the related negotiations or proceedings, shall be of any force or effect,
4 and the Parties shall stand in the same position, without prejudice, as if this
5 Settlement had been neither entered into nor filed with the Court. Should Defendant
6 void the Settlement under this paragraph, it shall be solely responsible for all Claims
7 Administration Costs.

8 3.31. Claims Administration Costs. The Claims Administrator shall be paid
9 for the costs of administration of the Settlement from the Gross Settlement Amount.
10 Such costs of administration are not to expected to exceed Seventeen Thousand Five
11 Hundred Dollars and No Cents (\$17,500.00), unless the court approves a higher
12 amount. No fewer than twenty (20) days prior to the Final Approval Hearing, the
13 Claims Administrator shall provide the Parties with a statement detailing the costs
14 of administration. The Claims Administrator, on Defendant's behalf, shall have the
15 authority and obligation to make payments, credits and disbursements, including
16 payments and credits in the manner set forth in this Settlement, to Participating Class
17 Members, calculated in accordance with the methodology set out in this Settlement
18 and orders of the Court. The Parties agree to cooperate in the administration of the
19 Settlement and to make all reasonable efforts to control and minimize the costs and
20 expenses incurred in administration of the Settlement. The Parties each represent
21 they do not have any financial interest in the Claims Administrator or otherwise have
22 a relationship with the Claims Administrator that could create a conflict of interest.
23 The Claims Administrator shall be responsible for: processing and mailing all court-
24 approved payments to the Plaintiffs, Class Counsel, Participating Class Members,
25 and the LWDA; printing and mailing the Notice Packets to the Settlement Class
26 Members as called for in this Settlement and ordered by the Court; receiving and
27 reporting Notice of Objections and Requests for Exclusion submitted by Settlement
28 Class Members; providing declaration(s) as necessary in support of preliminary

1 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
2 or the Court orders the Claims Administrator to perform. The Claims Administrator
3 shall keep the Parties timely apprised of the performance of all Claims Administrator
4 responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other
5 tax documents required by administration of this Settlement shall be prepared by the
6 Claims Administrator. Any expenses incurred in connection with such preparation
7 shall be Claims Administration Costs. The Claims Administrator shall be paid the
8 Claims Administration Costs no later than fifteen (15) calendar days after the Gross
9 Settlement Amount is fully funded.

10 3.32. Final Approval Hearing. At a reasonable time following the Response
11 Deadline, the Court shall hold the Final Approval Hearing, where objections, if any,
12 may be heard, and the Court shall determine amounts properly payable for (i) the
13 Class Counsel Award, (ii) the Class Counsel Costs, (iii) the Class Representative
14 Enhancement Awards, (iv) the LWDA PAGA Allocation; and (v) the Claims
15 Administration Costs.

16 3.33. Entry of Final Judgment. If the Court approves this Settlement at the
17 Final Approval Hearing, the Parties shall request that the Court enter the Final
18 Judgment after the Gross Settlement Amount has been fully funded, with the Court
19 retaining jurisdiction over the Parties to enforce the terms of the judgment. If the
20 Court grants final approval to the Settlement, notice of Final Approval shall be
21 posted on a website set up by the Settlement Administrator. Following the Court's
22 entry of Final Judgment, Class Counsel shall provide notice to the California Labor
23 & Workforce Development Agency in accordance with Cal. Lab. Code section
24 2699(l)(3).

25 3.34. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other
26 Participating Class Members pursuant to this Settlement will not count as earnings
27 or compensation for purposes of any benefits (e.g., pensions or retirement plans)
28 sponsored by Defendant. It is expressly understood and agreed that the receipt of

1 Individual Settlement Amount shall not entitle any Participating Class Member to
2 additional compensation or benefits under any collective bargaining agreement or
3 under any bonus, contest or other compensation or benefit plan or agreement in place
4 during the period covered by the Settlement, nor shall it entitle any Participating
5 Class Member to any increased pension and/or retirement, or other deferred
6 compensation benefits. It is the intent of the Parties that Individual Settlement
7 Amounts provided for in this Settlement are the sole payments to be made by
8 Defendant to Participating Class Members in connection with this Settlement, with
9 the exception of Plaintiffs, and that the Participating Class Members are not entitled
10 to any new or additional compensation or benefits as a result of having received the
11 Individual Settlement Awards. Furthermore, the receipt of Individual Settlement
12 Amounts by Participating Class Members shall not, and does not, by itself establish
13 any general, special, or joint employment relationship between and among the
14 Participating Class Member(s) and Defendant.

15 3.35. Nullification of Settlement. In the event: (i) the Court does not enter
16 the Preliminary Approval Order as specified herein; (ii) the Court does not grant
17 final approval of the Settlement as provided herein; (iii) the Court does not enter a
18 Final Judgment as provided herein; or (iv) the Settlement does not become final for
19 any other reason, this Settlement shall be null and void and any order or judgment
20 entered by the Court in furtherance of this Settlement shall be treated as void from
21 the beginning. In such a case, the Parties and any funds to be awarded under this
22 Settlement shall be returned to their respective statuses as of the date and time
23 immediately prior to the execution of this Settlement, and the Parties shall proceed
24 in all respects as if this Settlement had not been executed, except that any costs and
25 fees already incurred by the Claims Administrator shall be split by the Parties. In
26 the event an appeal is filed from the Court's Final Judgment, or any other appellate
27 review is sought, administration of the Settlement shall be stayed pending final
28 resolution of the appeal or other appellate review, but any fees incurred by the

1 Claims Administrator prior to it being notified of the filing of an appeal from the
2 Court's Final Judgment, or any other appellate review, shall be paid to the Claims
3 Administrator by Defendant within thirty (30) days of said notification.

4 3.36. Dispute Resolution. Except as otherwise set forth herein, all disputes
5 concerning the interpretation, calculation or payment of settlement claims, or other
6 disputes regarding compliance with this Settlement shall be resolved as follows:

7 3.37.1 If Plaintiffs or Class Counsel, on behalf of Plaintiffs or any
8 Settlement Class Members, or Defendant, at any time believe that the other Party or
9 Parties have breached or acted contrary to the Settlement, that Party shall notify the
10 other Party or Parties in writing of the alleged violation. Upon receiving notice of
11 the alleged violation or dispute, the responding Party shall have ten (10) days to
12 correct the alleged violation and/or respond to the initiating Party with the reasons
13 why the Party disputes all or part of the allegation.

14 3.37.2. If the response does not address the alleged violation to the
15 initiating Party's satisfaction, the Parties shall negotiate in good faith for up to ten
16 (10) days to resolve their differences.

17 3.37.3. If thereafter, the Parties still cannot resolve the dispute, the
18 Parties shall utilize the services of Steve Serratore (Mediator) in a good-faith attempt
19 to mediate and resolve the dispute.

20 3.37.4. If the Parties are unable to resolve their differences after
21 twenty (20) days, either Party may file an appropriate motion for enforcement with
22 the Court. The Court may award reasonable attorneys' fees and costs to the
23 prevailing party in any motion or action taken to enforce this Settlement.

24 3.37. Exhibits and Headings. The terms of this Settlement include the terms
25 set forth in Exhibits A and B, which are attached to this Settlement and incorporated
26 by this reference as though fully set forth in this paragraph. Any Exhibits to this
27 Settlement are an integral part of the Settlement. The descriptive headings of any
28 paragraphs or sections of this Settlement are inserted for convenience of reference

1 only and do not constitute a part of this Settlement.

2 3.38. Interim Stay of Proceedings. The Parties agree to stay all proceedings
3 in the Action(s) and thereafter implement and complete the Settlement.

4 3.39. Amendment or Modification. This Settlement may be amended or
5 modified only by a written instrument signed by counsel for all Parties or their
6 successors-in-interest.

7 3.40. Entire Settlement. This Settlement and any attached Exhibits constitute
8 the entire agreement among these Parties, and no oral or written representations,
9 warranties or inducements have been made to any Party concerning this Settlement
10 or its exhibits, other than the representations, warranties and covenants contained
11 and memorialized in the Settlement and its exhibits. No other prior or
12 contemporaneous written or oral agreements may be deemed binding on the Parties.

13 3.41. Authorization to Enter into Settlement. Counsel for the Parties warrant
14 and represent they are expressly authorized by the Parties whom they represent to
15 negotiate this Settlement and to take all appropriate actions required or permitted to
16 be taken by such Parties pursuant to this Settlement to effectuate its terms, and to
17 execute any other documents required to effectuate the terms of this Settlement. The
18 Parties and their counsel will cooperate with each other and use their best efforts to
19 affect the implementation of the Settlement. In the event the Parties are unable to
20 reach agreement on the form or content of any document needed to implement the
21 Settlement, or on any supplemental provisions that may become necessary to
22 effectuate the terms of this Settlement, the Parties may seek the assistance of the
23 Court to resolve such disagreement. The person signing this Settlement on behalf
24 of Defendant represents and warrants that he or she is authorized to sign this
25 Settlement on behalf of Defendant. Plaintiffs represent and warrant that they are
26 authorized to sign this Settlement and that they have not assigned any claim, or part
27 of a claim, covered by this Settlement to a third-party.

28 3.42. Binding on Successors and Assigns. This Settlement shall be binding

1 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
2 previously defined.

3 3.43. No Prior Assignments. The Parties and their counsel represent,
4 covenant, and warrant that they have not directly or indirectly assigned, transferred,
5 encumbered, or purported to assign, transfer, or encumber to any person or entity
6 any portion of any liability, claim, demand, action, cause of action or right herein
7 released and discharged.

8 3.44. California Law Governs. All terms of this Settlement and the exhibits
9 hereto shall be governed by and interpreted according to the laws of the State of
10 California.

11 3.45. This Settlement is Fair, Adequate and Reasonable. The Parties believe
12 this Settlement is a fair, adequate, and reasonable settlement of the Actions and have
13 arrived at this Settlement after extensive arms-length negotiations, taking into
14 account all relevant factors, present and potential.

15 3.46. Jurisdiction of the Court. In accordance with California Rule of Court
16 3.769(h), the Parties agree that the Court shall retain jurisdiction with respect to the
17 interpretation, implementation, and enforcement of the terms of this Settlement and
18 all orders and judgments entered in connection therewith, and the Parties and their
19 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,
20 implementing, and enforcing this Settlement and all orders and judgments entered
21 in connection therewith.

22 3.47. Invalidity of Any Provision. Before declaring any provision of this
23 Settlement invalid, the Court shall first attempt to construe the provision to be valid
24 to the fullest extent possible, consistent with applicable precedents.

25 3.48. Waiver of Certain Appeals. The Parties agree to waive appeals and to
26 stipulate to class certification for purposes of this Settlement only.

27 3.49. Cooperation. The Parties agree to cooperate fully with one another to
28 accomplish and implement the terms of this Settlement. Such cooperation shall

1 include, but not be limited to, execution of such other documents and the taking of
2 such other action as may be reasonably necessary to fulfill the terms of this
3 Settlement. The Parties to this Settlement shall use their best efforts, including all
4 efforts contemplated by this Settlement and any other efforts that may become
5 necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

6 3.50. Publicity. Plaintiffs and Class Counsel agree that they will not issue
7 any press releases, initiate any contact with the press, respond to any press inquiry,
8 or have any communication with the press about the Actions and/or the fact, amount,
9 or terms of the Settlement. However, Class Counsel may refer to the settlement
10 amount and the nature of the case without identifying any of the Parties. Before the
11 date of the filing of the motion for preliminary approval of the Settlement, Plaintiffs
12 and Class Counsel will not initiate any contact with Settlement Class Members about
13 the Settlement, except that: (a) Class Counsel, if contacted by a Settlement Class
14 Member, may respond that a settlement has been reached and that the details will be
15 communicated in a forthcoming Court-approved notice; and (b) Plaintiffs, if
16 contacted by a Settlement Class Member, may respond only that the Settlement
17 Class Member should contact Class Counsel. Neither Plaintiffs nor Class Counsel
18 shall hold a press conference or otherwise seek to affirmatively contact the media
19 about the Settlement. Additionally, no Party or their counsel shall disparage the
20 Settlement.

21 3.51. Mutual Preparation. The Parties have had a full opportunity to negotiate
22 the terms and conditions of this Settlement. Accordingly, this Settlement will not be
23 construed more strictly against one party than another merely by virtue of the fact
24 that it may have been prepared by counsel for one of the Parties, it being recognized
25 that, because of the arm's-length negotiations between the Parties, all Parties have
26 contributed to the preparation of this Settlement.

27 3.52. Representation by Counsel. The Parties acknowledge that they have
28 been represented by counsel throughout all negotiations that preceded the execution

1 of this Settlement, and that this Settlement has been executed with the consent and
2 advice of counsel, and reviewed in full. Further, Plaintiffs and Class Counsel warrant
3 and represent that there are no liens on the Settlement Agreement.

4 3.53. All Terms Subject to Final Court Approval. All amounts and
5 procedures described in this Stipulation are subject to final Court approval.

6 3.54. Notices. Unless otherwise specifically provided, all notices, demands
7 or other communications in connection with this Settlement shall be: (1) in writing;
8 (2) deemed given on the third business day after mailing or if emailed, the next
9 business day; and (3) sent via email and/or United States registered or certified mail,
10 return receipt requested, addressed as follows:

11 **To Plaintiffs:**

12 Paul K. Haines, Esq.
13 phaines@haineslawgroup.com
14 Sean Blakely, Esq.
15 sblakely@haineslawgroup.com
16 Alexandra McIntosh, Esq.
17 amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350
Facsimile: (424) 292-2355

18 **To Defendant:**

19 David L. Cheng, Esq.
20 dcheng@fordharrison.com
21 Jennifer S. McGeorge, Esq.
22 jmcgeorge@fordharrison.com
23 FORD & HARRISON, LLP
350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
Telephone: (213) 237-2400
Facsimile: (213) 237-2401

24 3.55. Execution by Settlement Class Members. It is agreed that it is
25 impossible or impractical to have each Settlement Class Member execute this
26 Settlement. The Notice of Settlement will advise all Settlement Class Members of
27 the binding nature of the release and such shall have the same force and effect as if
28 each Settlement Class Member executed this Settlement.

1 3.56. Execution by Plaintiffs and Defendant. Plaintiffs and Defendant, by
2 signing this Settlement, are bound by the terms herein.

3 3.57. Fair, Adequate and Reasonable Settlement. The Parties hereto agree
4 that the terms and conditions of this Settlement are the result of lengthy, intensive,
5 arms-length negotiations between the Parties and that this Settlement shall not be
6 construed in favor of or against any of the Parties by reason of their participation in
7 the drafting of this Settlement.

8 3.58. Binding Agreement. The Parties warrant that they understand and have
9 full authority to enter into this Settlement, and further intend that this Settlement will
10 be fully enforceable and binding on all Parties, and agree that it will be admissible
11 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any
12 mediation confidentiality provisions that otherwise might apply under federal or
13 state law.

14 3.59. Counterparts. This Settlement shall become effective upon its
15 execution by all of the undersigned. Plaintiffs and Defendant, may execute this
16 Settlement in counterparts, and execution of counterparts shall have the same force
17 and effect as if each had signed the same instrument. Copies of the executed
18 Settlement shall be effective for all purposes as though the signatures contained
19 therein were original signatures.

20 Dated: September 19, 2022

LINCARE INC.

21 By: [Signature]
22 Name: Sheila Kalteux
23 Title: Authorized Representative

24 Dated: September __, 2022

25 By: _____
26 ANTELMA CHAVEZ, Plaintiff

27 Dated: September __, 2022

28 By: _____
BERNAL MAZARIEGOS, Plaintiff

1 3.56. Execution by Plaintiffs and Defendant. Plaintiffs and Defendant, by
2 signing this Settlement, are bound by the terms herein.

3 3.57. Fair, Adequate and Reasonable Settlement. The Parties hereto agree
4 that the terms and conditions of this Settlement are the result of lengthy, intensive,
5 arms-length negotiations between the Parties and that this Settlement shall not be
6 construed in favor of or against any of the Parties by reason of their participation in
7 the drafting of this Settlement.

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9 full authority to enter into this Settlement, and further intend that this Settlement will
10 be fully enforceable and binding on all Parties, and agree that it will be admissible
11 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any
12 mediation confidentiality provisions that otherwise might apply under federal or
13 state law.

14 3.59. Counterparts. This Settlement shall become effective upon its
15 execution by all of the undersigned. Plaintiffs and Defendant, may execute this
16 Settlement in counterparts, and execution of counterparts shall have the same force
17 and effect as if each had signed the same instrument. Copies of the executed
18 Settlement shall be effective for all purposes as though the signatures contained
19 therein were original signatures.

20 Dated: September __, 2022

LINCARE INC.

21 By: _____
22 Name:
23 Title:

24 Dated: September 23, 2022

25 By:  _____
26 ANTELMA CHAVEZ, Plaintiff

27 Dated: September __, 2022

28 By: _____
BERNAL MAZARIEGOS, Plaintiff

2022-09-12 Joint Stipulation of Class Action Settlement and Release (FINAL for signatures) (002)

Final Audit Report

2022-09-24

Created:	2022-09-22
By:	Andy Lidman (alidman@haineslawgroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAijtRw-U1dzLX0yBLpdGeJPH4BVKq0x

"2022-09-12 Joint Stipulation of Class Action Settlement and Release (FINAL for signatures) (002)" History



Document created by Andy Lidman (alidman@haineslawgroup.com)

2022-09-22 - 9:00:18 PM GMT- IP address: 206.169.56.234



Document emailed to antelmachavez8@gmail.com for signature

2022-09-22 - 9:01:01 PM GMT



Email viewed by antelmachavez8@gmail.com

2022-09-22 - 9:29:41 PM GMT- IP address: 172.56.120.240



Signer antelmachavez8@gmail.com entered name at signing as Antelma Chavez

2022-09-24 - 2:28:55 AM GMT- IP address: 23.240.136.34



Document e-signed by Antelma Chavez (antelmachavez8@gmail.com)

Signature Date: 2022-09-24 - 2:28:56 AM GMT - Time Source: server- IP address: 23.240.136.34



Agreement completed.

2022-09-24 - 2:28:56 AM GMT



Adobe Acrobat Sign

1 3.56. Execution by Plaintiffs and Defendant. Plaintiffs and Defendant, by
2 signing this Settlement, are bound by the terms herein.

3 3.57. Fair, Adequate and Reasonable Settlement. The Parties hereto agree
4 that the terms and conditions of this Settlement are the result of lengthy, intensive,
5 arms-length negotiations between the Parties and that this Settlement shall not be
6 construed in favor of or against any of the Parties by reason of their participation in
7 the drafting of this Settlement.

8 3.58. Binding Agreement. The Parties warrant that they understand and have
9 full authority to enter into this Settlement, and further intend that this Settlement will
10 be fully enforceable and binding on all Parties, and agree that it will be admissible
11 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any
12 mediation confidentiality provisions that otherwise might apply under federal or
13 state law.

14 3.59. Counterparts. This Settlement shall become effective upon its
15 execution by all of the undersigned. Plaintiffs and Defendant, may execute this
16 Settlement in counterparts, and execution of counterparts shall have the same force
17 and effect as if each had signed the same instrument. Copies of the executed
18 Settlement shall be effective for all purposes as though the signatures contained
19 therein were original signatures.

20 Dated: September __, 2022

LINCARE INC.

21 By: _____
22 Name:
23 Title:

24 Dated: September __, 2022

25 By: _____
26 ANTELMA CHAVEZ, Plaintiff

27 Dated: September 25, 2022

28 By: Bernal F Mazariegos
Bernal F Mazariegos (Case 2:21-cv-00170)
BERNAL MAZARIEGOS, Plaintiff







2022-09-12 Joint Stipulation of Class Action Settlement and Release (FINAL for signatures)

Final Audit Report

2022-09-26

Created:	2022-09-22
By:	Andy Lidman (alidman@haineslawgroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAtyG6myuKtNhDqG2gaQO8CllwNqUBD5sT

"2022-09-12 Joint Stipulation of Class Action Settlement and Release (FINAL for signatures)" History

-  Document created by Andy Lidman (alidman@haineslawgroup.com)
2022-09-22 - 7:20:30 PM GMT- IP address: 206.169.56.234
-  Document emailed to mazariegos698@gmail.com for signature
2022-09-22 - 7:21:33 PM GMT
-  Email viewed by mazariegos698@gmail.com
2022-09-26 - 5:09:08 PM GMT- IP address: 76.93.44.62
-  Signer mazariegos698@gmail.com entered name at signing as Bernal F Mazariegos
2022-09-26 - 5:10:34 PM GMT- IP address: 76.93.44.62
-  Document e-signed by Bernal F Mazariegos (mazariegos698@gmail.com)
Signature Date: 2022-09-26 - 5:10:35 PM GMT - Time Source: server- IP address: 76.93.44.62
-  Agreement completed.
2022-09-26 - 5:10:35 PM GMT



Adobe Acrobat Sign

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

ANTELMA CHAVEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

LINCARE INC., a Delaware corporation; and DOES 1
through 100,

Defendants.

Case No. 56-2019-00536955-CU-OE-VTA

NOTICE OF CLASS ACTION SETTLEMENT

To: All non-exempt, hourly workers who were employed by Lincare Inc. (“Lincare”) in California at any time from December 5, 2015 through and including August 11, 2022 (the “Class Period”).

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Lincare’s records show that you were employed by Lincare as a non-exempt employee in California between December 5, 2015 and August 11, 2022. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <http://www.lincare.com/settlement>.

What is this case about?

Plaintiffs Antelma Chavez and Bernal Mazariegos (“Plaintiffs”) brought this lawsuit against Lincare, asserting claims on behalf of all Participating Class Members. Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Participating Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiffs alleged that Lincare: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to authorize and permit all rest periods; (5) failed to maintain accurate records and issue accurate, itemized wage statements; (6) failed to pay all final wages at termination; (7) engaged in unfair business practices; and (8) is liable for civil penalties under the Private Attorneys General Act (Labor Code section 2698) (“PAGA”).

Lincare denies that it has done anything wrong. Lincare denies that it owes Participating Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Lincare, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Lincare’s best interests and the interests of Participating Class Members to settle the Lawsuit on the terms summarized in this Notice. After Lincare provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Lincare, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Lincare, your decision about whether to participate in the Settlement will not affect your employment. California law and Lincare's policies strictly prohibit unlawful retaliation. Lincare will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Participating Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs / Participating Class Members: HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Sean M. Blakely (SBN 264384) sblakely@haineslawgroup.com Alexandra R. McIntosh (SBN 320904) amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Lincare: FORD & HARRISON LLP David L. Cheng (SBN 240926) dcheng@fordharrison.com Jennifer S. McGeorge (SBN 221679) jmcgeorge@fordharrison.com 350 South Grand Avenue, Suite 2300 Los Angeles, CA 90071 Tel: (213) 237-2400 Fax: (213) 237-2401
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Lincare in California who worked at any time during the Class Period. The class excludes any employee who previously brought a lawsuit against Lincare and which subsequently resulted in settlement. Participating Class Members who do not submit a valid and timely Request For Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Lincare, as described below in the “Release” section.

Lincare agreed to pay \$1,600,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Participating Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Awards. Lincare will fund the Gross Settlement Amount no later than 60 days after the final approval of the settlement (assuming no objections or appeals).

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved **Phoenix** Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform other duties relating to the Settlement. The Court has approved setting aside up to \$17,500.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Participating Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Participating Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Fund (which is currently estimated to be \$533,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$115,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Awards. Class Counsel will ask the Court to award \$15,000.00 to each of the named Plaintiffs as a Class Representative Enhancement Award. This is meant to compensate Plaintiffs for their service and extra work provided on behalf of the Participating Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code section 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the individuals with PAGA standing (“Aggrieved Employees”) as part of the Net Settlement Amount.

Calculation of Participating Class Members’ Individual Settlement Payment. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Participating Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$12,500.00 payable to Aggrieved Employees as PAGA civil penalties will be designated as the “Aggrieved Employee PAGA Allocation.” Each employee who was employed by Lincare in California any time between December 5, 2018 and August 11, 2022 (“Aggrieved Employee Period”), will receive a portion of the Aggrieved Employee PAGA Allocation proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Wage Statement Amount: Fifteen percent (15%) of the Net Settlement Amount will be designated as the “Wage Statement Amount.” Each employee who was employed by Lincare in California any time between December 5, 2018 and August 11, 2022, will receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (iii) Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount will be designated as the “Waiting Time Amount.” The Waiting Time Amount will be distributed in equal shares to each Participating Class Member who separated their employment with Lincare on or after December 5, 2016.
- (iv) The remainder of the Net Settlement Amount will be distributed to each Participating Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Participating Class Members during the Class Period.

Individual Settlement Payments to Participating Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Participating Class Members who did not submit a valid and timely Request for Exclusion. Each Participating Class Member who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Participating Class Members whose checks are not cashed within 180 days after mailing will be distributed to the California State Controller in the name of the Settlement Class member to whom the check was issued.

Allocation and Taxes. Each Individual Settlement Payment will be allocated as 90% penalties and interest and 10% wages. The Settlement Administrator will be responsible for issuing to Participating Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Amounts paid to PAGA Members for their share of civil penalties under PAGA will be allocated as 100% penalties. The Settlement Administrator will issue PAGA Members an IRS Form 1099 for these payments. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

Release. If the Court approves the Settlement, each Participating Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Lincare, and all of its affiliated entities, related entities, owners, officers, directors, members, parents, subsidiaries, affiliates, employees, agents, successors and assigns (collectively the “Released Parties”), from all claims in the Actions, as well as any and all claims that were asserted or could have been asserted based on the facts pled in the Actions (including those alleged in Plaintiffs’ Letters to the California Labor & Workforce Development Agency, the allegations of which are expressly incorporated herein including any and all claims arising from the facts alleged in the Action(s), including all wage and hour claims for unpaid wages including minimum wages and overtime, failure to pay wages during employment and upon separation of employment, meal and rest break violations, wage statement violations, failure to reimburse all necessary business expenses, and recovery of restitution, disgorgement, injunctive relief, declaratory relief, conversion, unjust enrichment, civil and statutory penalties, interest, liquidated damages, and claims under California Labor Code sections 201-203, 204, 210, 212-213, 218.6, 223, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2698-2699.5, 2802, 2804, applicable Industrial Welfare Commission Wage Orders, claims under California Business & Professions Code sections 17200-17208, Civil Code §§3287 and 3289, Code of Civil Procedure

§1021.5, and recovery of attorney's fees and costs under any applicable statute ("Class Released Claims"). This release will apply to claims arising during the Class Period and become effective upon the date that Lincare deposits the entire Gross Settlement Amount with the Settlement Administrator.

Conditions of Settlement. The Settlement becomes effective on the latest of the following dates: (i) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters final approval; (ii) if an objection is filed, sixty-five (65) days after the date upon which the Court grants final approval of the settlement if no appeal is initiated; or (iii) if a timely appeal is initiated, the Effective Date shall be the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement (the "Effective Date").

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and Aggrieved Employee Period as well as whether you are entitled to a share of the Wage Statement and/or Waiting Time Amount. The information contained in Lincare's records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Participating Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a timely Request for Exclusion. Any Settlement Class member who wishes to opt out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator by **<<RESPONSE DEADLINE>>**. The Request for Exclusion shall state that Settlement Class members who wish to exclude themselves from the Settlement must prepare and submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by **<<RESPONSE DEADLINE>>** and mailed to the Settlement Administrator at the **<<ADMIN ADDRESS>>**. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable).

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include (1) your full name; (2) your dates of employment; (3) the last four (4) digits of your Security number and/or Employee ID number; (4) the basis for your objection; and (5) whether you intend to appear at the Final Approval Hearing. All objections or other correspondence must state the name and number of the case, which is *Antelma Chavez v. Lincare, et al.*, Ventura County Superior Court, Case No. 56-2019-00536955-CU-OE-VTA. Objections in writing must be signed and postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department 41 of the Ventura County Superior Court located at 800 South Victoria Avenue,

Ventura, California 93009. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 41 of the Ventura County Superior Court located at 800 South Victoria Avenue, Ventura, California 93009. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Award to the Class Representatives, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Ventura County Courthouse, located at Ventura County Superior Court, 800 South Victoria Avenue, Ventura, California 93009, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, LINCARE, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF SETTLEMENT AWARD

ANTELMA CHAVEZ v. LINCARE INC.

VENTURA COUNTY SUPERIOR COURT, CASE NO. 56-2019-00536955-CU-OE-VTA

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Lincare's records:

- (a) You worked _____ workweeks for Lincare in California between December 5, 2015 and August 11, 2022;
- (b) You worked _____ workweeks for Lincare in California between December 5, 2018 and August 11, 2022;
- (c) You <<DID/DID NOT>> separate your employment with Lincare on or after December 5, 2016.

Based on the above, your Individual Settlement Payment is estimated to be \$ _____ and your PAGA Amount is estimated to be \$ _____.

(IV) If you disagree with items (a) - (c) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Lincare's records, those records will control unless you are able to provide documentation that establishes that Lincare's records are mistaken. If there is a dispute about whether Lincare's information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT B

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ANTELMA CHAVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LINCARE INC., a Delaware corporation; and
DOES 1 through 100,

Defendants.

Case No. 2:20-cv-02043 JWH-E

**THIRD AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (2) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (3) **FAILURE TO REIMBURSE ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE
§§ 2802, 2804);**
- (4) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203, 212-
213);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT ((LABOR CODE §
2698, *et seq.*)**
- (8) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197)**
- (9) **FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204,
510, 558, 1194, AND 1198)**

**(10) FAIR LABOR STANDARDS ACT
VIOLATIONS (29 U.S.C. § 201, *et*
seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiffs Antelma Chavez and Bernal Mazariegos (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated, hereby brings this Second Amended Class and Representative
3 Action Complaint (“Complaint”) against Lincare Inc.; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief, alleges as follows:

5 **JURISDICTION**

6 1. Plaintiffs, on behalf of themselves and all others similarly situated, originally filed
7 this action in Ventura County Superior Court for recovery of unpaid wages and penalties under
8 California Business & Professions Code § 17200 *et seq.*; Labor Code §§ 201-203, 212-213, 226,
9 226.7, 510, 512, 516, 558, 1182.12, 1194, 1197, 1194.2, 1198, 2802, and 2804; 29 U.S.C. § 201,
10 *et seq.*; and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001 (hereinafter, “Wage
11 Order 7”), in addition to seeking injunctive relief, declaratory relief, and restitution. As explained
12 herein, Plaintiff Chavez filed a separate action seeking civil penalties under the Private Attorneys
13 General Act (Labor Code § 2698 *et seq.*) (“PAGA”). Pursuant to a stipulation of the parties and
14 Court order, Plaintiff Chavez seeks those civil penalties in this Complaint as well.

15 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
16 The monetary damages and restitution that Plaintiff seeks exceeds the minimal jurisdictional
17 limits of the Superior Court and will be established according to proof at trial.

18 3. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves to the California market so as to render the exercise of jurisdiction over them by the
21 California courts consistent with the traditional notions of fair play and substantial justice.

22 **VENUE**

23 4. Venue as to each Defendant is proper in this judicial district pursuant to California
24 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
25 complained of hereon occurred in the County of Ventura. Defendants own, maintain offices,
26 transact business, have agent(s) within the County of Ventura, and/or otherwise are found within
27 the County of Ventura, and Defendants are within the jurisdiction of this Court for purposes of
28 service of process.

1 **PARTIES**

2 5. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein,
3 Plaintiffs were and currently are, California residents. During the four years immediately
4 preceding the filing of this action and within the statute of limitations periods applicable to each
5 cause of action pled herein, Defendants employed Plaintiffs as non-exempt employees. Plaintiffs
6 were, and are, victims of Defendants' policies and/or practices complained of herein, lost money
7 and/or property, and has been deprived of the rights guaranteed by under California Business &
8 Professions Code § 17200 *et seq.*; Labor Code §§ 201-203, 212-213, 226, 226.7, 510, 512, 516,
9 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*; 29 U.S.C. § 201, *et seq.*;
10 and Wage Order 7, which sets employment standards for the "Mercantile Industry."

11 6. Plaintiffs are informed and believe, and based thereon alleges, that during the four
12 years preceding the filing of this action and continuing to the present, Defendants did (and
13 continue to do) business by supplying respiratory-therapy products, and employed Plaintiffs and
14 other similarly situated non-exempt employees within Ventura County and the State of California
15 and, therefore, were (and are) doing business in Ventura County and the State of California.

16 7. Plaintiffs do not know the true names, identities and capacities, whether individual,
17 corporate, associate or otherwise, of Defendants Does 1 through 10, inclusive, and for that reason,
18 said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court
19 to amend this Complaint when such true names and capacities are discovered. Plaintiff is
20 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
21 individual, partners, or corporate, were responsible in some manner for the acts and omissions
22 alleged herein, and proximately caused Plaintiffs and the Classes (as defined in Paragraph 19) to
23 be subject to the unlawful employment practices, wrongs, injuries and damages complained of
24 herein.

25 8. Plaintiffs are informed, and believe, and thereon alleges, that at all times
26 mentioned herein, Defendants were and are the employers of Plaintiffs and all members of the
27 Classes.

28 9. At all times herein mentioned, each of said Defendants participated in the doing

of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

10. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Plaintiffs further allege that all Defendants were joint employers for all purposes of Plaintiffs and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

11. Defendants employed Plaintiff Chavez as a “Customer Service Representative” (or similarly titled position) from approximately August 2016 to on or about December 18, 2018. Throughout Plaintiff Chavez’s employment with Defendants, Plaintiff Chavez worked at Defendants’ office in Oxnard, California.

12. During Plaintiff Chavez’s tenure, Defendants required Plaintiff Chavez and other non-exempt employees to record their hours worked using Defendants’ timekeeping system. Specifically, Plaintiff Chavez and other non-exempt employees clocked in and out using their work computer at the beginning and end of their shift, in addition to at the beginning and end of each meal period.

13. Defendants employed Plaintiff Mazariegos as a “Customer Delivery Technician” (or similarly titled position) from approximately October 2016 to approximately December 2016. Throughout Plaintiff Mazariegos’ employment with Defendants, Plaintiff Mazariegos worked at Defendants’ office in Redlands, California.

14. At all times relevant herein, Defendants’ meal period policies/practices failed to provide Plaintiffs and other non-exempt employees with legally-compliant meal periods, including meal periods of at least 30-minutes commencing before the conclusion of the fifth hour

1 of work and/or a second meal period when they worked shifts in excess of 10.0 hours. Due to
2 work demands imposed by Defendants, Plaintiffs and other non-exempt employees often were
3 unable to take a meal period prior to the completion of the fifth hour of work, and on some
4 occasions were not provided with any meal period at all. For example, during the pay period
5 beginning on 11/26/2018 and ending on 12/9/2018, Plaintiff Chavez worked two shifts in excess
6 of nine hours without receiving any meal period, and during this same pay period she also had
7 four meal periods that began after the completion of her fifth hour of work. Yet during this pay
8 period, Plaintiff Chavez was not paid a meal period premium by Defendants for any of these shifts
9 in which they failed to provide her with all legally required meal periods, as mandated by Labor
10 Code § 226.7. Upon information and belief, Defendants failed to maintain an adequate system
11 for ensuring meal period compliance amongst its non-exempt employee workforce. As a result
12 of Defendants' failure to provide all legally required meal periods, Defendants failed to
13 compensate their employees with the required meal period premium for each workday in which
14 employees experienced a meal period violation. Upon information and belief, during at least a
15 portion of the putative class period, Defendants did not maintain a payroll code or other
16 mechanism for the payment of meal period premiums under Labor Code § 226.7 in the event they
17 failed to provide a legally compliant meal period to their non-exempt employees.

18 15. Defendants failed to authorize and permit Plaintiffs and other non-exempt
19 employees from taking all legally-compliant rest periods due to work demands as well as
20 Defendant's unlawful on-premises rest period policy. As a result, Plaintiffs and other non-exempt
21 employees were often not authorized or permitted to take any rest periods during work shifts in
22 excess of 8.0 hours or a third rest period on shifts in excess of 10.0 hours. On those occasions,
23 Defendants failed to compensate Plaintiffs and other non-exempt employees with the required
24 rest period premium for each workday in which they experienced a rest period violation as
25 mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll
26 code or other mechanism for the payment of rest period premium payments under Labor Code §
27 226.7 in the event that Plaintiffs and other non-exempt employees were not provided with a
28 legally-compliant rest period.

1 16. Defendants also failed to reimburse Plaintiffs and other non-exempt employees for
2 all reasonable and necessary work expenditures, including, but not limited to personal cellular
3 phone expenses. Specifically, Plaintiffs' supervisor called and/or text messaged Plaintiffs on their
4 personal cellular phone on most workdays to discuss work-related matters, and there were often
5 group text messages pertaining to work-related matters that Plaintiffs and her co-workers used to
6 communicate with each other throughout the workday. Additionally, when Plaintiff Mazariegos
7 worked on-call hours during the weekends, Plaintiff Mazariegos was required to use his personal
8 cellular phone to receive work related calls, including work assignments. Plaintiffs and other non-
9 exempt employees were not reimbursed for these work-related expenditures as required pursuant
10 to Labor Code § 2802.

11 17. Defendants also failed to pay Plaintiff Mazariegos and other non-exempt
12 employees all reporting time wages owed. During Plaintiff Mazariegos' employment with
13 Defendants, Defendants required him and other non-exempt employees to work on-call shifts,
14 during which Plaintiff Mazariegos and other non-exempt employees had to be available to receive
15 a call at any point during the shift. On information and belief, if Plaintiffs and other non-exempt
16 employees received a call during an on-call shift, they only had a limited amount of time to
17 respond to the call and arrive at the worksite. If the employee failed to answer the call and/or
18 arrive at the worksite within a specified amount of time, he or she would be disciplined. On
19 occasions when Plaintiff Mazariegos and other non-exempt employees were required to work
20 scheduled on-call shifts, but were not called in to work or were furnished less than half of their
21 usual or scheduled day's work, Defendants failed to pay Plaintiff Mazariegos and other non-
22 exempt employees with half their usual or scheduled day's work (but in no event less than two
23 hours nor more than four hours), at their regular rate of pay in violation of Wage Order 7 § 5 and
24 Labor Code § 1198.

25 18. As a result of Defendants' failure to pay all meal and rest period premium wages,
26 Defendants maintained inaccurate payroll records, issued inaccurate wage statements to Plaintiffs
27 and other non-exempt employees, and failed to pay Plaintiffs and other non-exempt employees
28 all wages owed at the time of their separation of employment with Defendants. Defendants also

1 failed to timely pay Plaintiff Chavez her final wages at the time of her separation from
2 employment as Defendants did not pay Plaintiff Chavez's her earned wages until two months
3 after her separation from employment. Upon information and belief, Defendants have a policy
4 and practice of failing to pay all earned wages to their former employees at the time of their
5 separation from employment. Defendant further failed to issue accurate itemized wage statements
6 as a result of its failure to include the name and address of the legal entity that is the employer.

7 19. Defendants further violated California Labor Code sections 212 and 213 by issuing
8 pay cards to its employees, including Plaintiff Chavez, as payment of their final wages without
9 their voluntary authorization and which were not negotiable and payable in cash, on demand,
10 without discount at established businesses within the State of California.

11 **CLASS ACTION ALLEGATIONS**

12 20. **Class Definitions:** Plaintiffs brings this action on behalf of themselves and the
13 following Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure:

- 14 a. The Meal Period Class consists of all of Defendants' current and former non-
15 exempt employees in California who worked at least one shift in excess of 5.0
16 hours, during the four years immediately preceding the filing of this action through
17 the present.
- 18 b. The Rest Period Class consists of all of Defendants' current and former non-
19 exempt employees in California who worked at least one shift in excess of 3.5
20 hours, during the four years immediately preceding the filing of this action through
21 the present.
- 22 c. The Employee Expense Class consists of all of Defendants' current and former
23 non-exempt employees in California who were not reimbursed for the use of their
24 personal cellular phones, during the four years preceding the filing of this action
25 through the present.
- 26 d. The Wage Statement Class consists of (i) all members of the Meal Period Class
27 and/or Rest Period Class who received a wage statement from Defendants and/or
28 (ii) all employees who received a wage statement with Defendant's logo, during

the one year preceding the filing of this action through the present.

e. The Waiting Time Class consists of consists of all (i) Defendants' former employees in California who upon their separation of employment received their final wages in the form of a pay card and/or (ii) Defendants' former employees who did not receive their final wages immediately at the time of termination; (iii) Defendants' former employees who did not receive their final wages at least 72 hours after resignation; and (iv) Defendants' formerly employed members of the Meal Period Class, Rest Period Class, Minimum Wage Class, and/or Overtime Class during the three years immediately preceding the filing of this action through the present.

f. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one on call shift, during the four years preceding the filing of this action through the present.

g. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8 hours in a workday and/or more than 40 hours in a workweeks and worked at least one on call shift, during the four years preceding the filing of this action through the present.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the members of each of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

a. Whether Defendants provided all legally-compliant meal periods to Plaintiffs and members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- b. Whether Defendants authorized and permitted all legally-compliant rest periods to Plaintiffs and members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- c. Whether Defendants' reimbursement policies, and failure to reimburse Plaintiffs and members of the Employee Expense Class for business expenditures necessarily incurred in the performance of their work duties comply with Labor Code § 2802;
- d. Whether Defendants furnished legally-compliant wage statements to Plaintiff Chavez and members of the Wage Statement Class pursuant to Labor Code §§ 226;
- e. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to Plaintiffs and Waiting Time Class members at their separation of employment were lawful;
- f. Whether Defendants paid all overtime wages owed to members of the Overtime Class for all overtime hours worked pursuant to Labor Code sections 204, 510, 558, 1194, and 1198;
- g. Whether Defendants provided all reporting time pay to members of the Minimum Wage Class pursuant to Wage Order 7 § 5, Labor Code section 204; and
- h. Whether Defendants' paid employees their final pay on a pay card or ATM card without their authorization in violation of Labor Code sections 212 and 213.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as meal and rest periods, reimbursement for necessary business expenditures, furnishing accurate and itemized wage statements, payment of final wages on pay cards, minimum wage and overtime, and timely paying all final wages upon separation of employment. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for

1 recovery or as to the amount of their damages.

2 24. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes because
3 Defendants employed Plaintiffs as a non-exempt employee in California during the statute(s) of
4 limitations period applicable to each cause of action pled in this Complaint. As alleged herein,
5 Plaintiffs, like the members of the Classes, did not receive all meal periods, were not authorized
6 and permitted to take all rest periods, did not receive reimbursements for necessary business
7 expenditures, did not receive itemized and accurate wage statements, and did not receive all final
8 wages owed to them upon their separation of employment with Defendants. Additionally, Plaintiff
9 Chavez received her final wages on a pay card without her consent.

10 25. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
11 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
12 Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent the members of
13 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-
14 and-hour class actions in state and federal courts in the past and are committed to vigorously
15 prosecuting this action on behalf of the members of the Classes.

16 26. **Superiority:** The Labor Code is broadly remedial in nature and serves an
17 important public interest in establishing minimum working conditions and standards in California.
18 These laws and labor standards protect the average working employee from exploitation by
19 employers who have the responsibility to follow the laws and who may seek to take advantage of
20 superior economic and bargaining power in setting onerous terms and conditions of employment.
21 The nature of this action and the format of laws available to Plaintiffs and members of the Classes
22 make the class action format a particularly efficient and appropriate procedure to redress the
23 violations alleged herein. If each employee were required to file individual lawsuits, Defendants
24 would necessarily gain an unconscionable advantage since they would be able to exploit and
25 overwhelm the limited resources of each individual plaintiff with their vastly superior financial
26 and legal resources. Moreover, requiring each member of the Classes to pursue an individual
27 remedy would also discourage the assertion of lawful claims by employees who would be
28 disinclined to file an action against their former and/or current employer for real and justifiable

1 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
2 prosecution of separate actions by individual class members, even if possible, would create a
3 substantial risk of inconsistent or varying verdicts or adjudications with respect to individual class
4 members against Defendants herein; and which would establish potentially incompatible
5 standards of conduct for Defendants; and/or legal determinations with respect to individual class
6 members which would, as a practical matter, be dispositive of the interest of the other class
7 members not parties to adjudications or which would substantially impair or impede the ability
8 of the class members to protect their interests. Further, the claims of the individual members of
9 the Class are not sufficiently large to warrant vigorous individual prosecution considering all of
10 the concomitant costs and expenses attending thereto. As such, the Classes are maintainable as
11 classes under Rule 23 of the Federal Rules of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **MEAL PERIOD VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 27. Plaintiffs re-alleges and incorporates by reference all prior paragraphs.

16 28. Defendants failed to provide Plaintiffs and members of the Meal Period Class with
17 proper meal periods in accordance with the mandates of the California Labor Code and Wage
18 Order 7. As such, Defendants are responsible for paying premium compensation for meal period
19 violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 7.

20 29. Plaintiffs are informed and believe that Defendants maintained a policy and/or
21 practice of failing to pay all meal period premiums at the employee's regular rate of
22 compensation, despite Defendants' failure to provide Plaintiffs and other non-exempt employees
23 with all legally-complaint meal periods. As a result, Plaintiffs and members of the Meal Period
24 Class are owed meal period premium payments per California Labor Code § 512 and 226.7, and
25 Civil Code §§ 3287(b) and 3289.

26 ///

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 30. Plaintiffs re-allege and incorporate by reference all prior paragraphs.

5 31. Labor Code §§ 226.7 and 516, and Wage Order 7, § 12 establish the right of
6 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
7 period worked, or major fraction thereof.

8 32. As alleged herein, Defendants failed to authorize and permit Plaintiffs and
9 members of the Rest Period Class to take their legally entitled rest periods. Defendants also failed
10 to compensate Plaintiffs and members of the Rest Period Class for each rest period to which they
11 were entitled while working.

12 33. The foregoing violations create an entitlement to recovery by Plaintiffs and
13 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
14 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
15 to Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

18 **(AGAINST ALL DEFENDANTS)**

19 34. Plaintiffs re-allege and incorporate by reference all prior paragraphs.

20 35. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
21 states that “an employer shall indemnify his or her employees for all necessary expenditures or
22 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
23 his or her obedience to the directions of the employer.”

24 36. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
25 states that “any contract or agreement, express or implied, made by any employee to waive the
26 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
27 employee or his personal representative of any right or remedy to which he is entitled under the
28 laws of this State.”

1 37. Due to Defendants' unlawful policy and practice of requiring employees to use
2 their personal cellular phones for work-related purposes, and failing to pay reimbursements to
3 Plaintiffs and members of the Employee Expense Class, Defendants have violated Labor Code
4 §2802.

5 38. As a proximate result of Defendants' policies and/or practices in violation of Labor
6 Code §§ 2802 and 2804, Plaintiff and members of the Employee Expense Class suffered damages
7 in sums, which will be shown according to proof.

8 39. Plaintiff and members of the Employee Expense Class are entitled to attorneys'
9 fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

10 40. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
11 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
12 Plaintiffs and members of the Employee Expense Class are entitled to interest, which shall accrue
13 from the date on which they incurred the initial necessary expenditure.

14 **FOURTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 41. Plaintiffs re-allege and incorporate by reference all prior paragraphs.

18 42. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
19 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
20 Chavez and the Wage Statement Class with accurate and itemized wage statements that included,
21 among other requirements, all meal and rest period premium wages earned in violation of Labor
22 Code § 226.

23 43. Defendants' failure to furnish Plaintiff Chavez and members of the Wage
24 Statement Class with accurate and itemized wage statements resulted in actual injury, as said
25 failures led to, among other things, the non-payment of all their meal and rest period premium
26 wages, and deprived them of the information necessary to identify the discrepancies in
27 Defendants' reported data.

28 44. Defendants' failures create an entitlement to recovery by Plaintiff Chavez and

members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code §§ 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit according to Labor Code §§ 226 and 226.3.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

45. Plaintiffs re-allege and incorporates by reference all prior paragraphs.

46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

47. Additionally, Defendants violated Labor Code §§ 201-203, 212, and 213 by issuing pay cards or ATM cards as final payment of wages to employees upon their separation from employment without the employee's consent. Specifically, although Defendants offer employees three options for receiving their pay, Defendants' written policies and practices require employees to receive their final pay on a debit card in violation of Labor Code § 212. As alleged herein, these pay cards or ATM cards were not useable at all locations, required fees for usage in some instances, and upon information and belief, did not allow employees to access all of the monies contained on such cards.

48. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to timely pay Plaintiffs and members of the Waiting Time Class all final wages due to them at their separation from employment, including all minimum and overtime wages, and meal and rest period premium wages.

49. Furthermore, Plaintiffs are informed and believe, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members of the Waiting Time Class all earned wages at the end of employment in a timely manner

1 pursuant to the requirements of Labor Code §§ 201-203.

2 50. Defendants' failure to pay all final wages was willful within the meaning of Labor
3 Code § 203. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting
4 Time Class their earned wages upon separation from employment results in a continued payment
5 of wages up to thirty days from the time the wages were due.

6 51. Therefore, Plaintiffs and members of the Waiting Time Class are entitled to
7 compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

8 **SIXTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(AGAINST ALL DEFENDANTS)**

11 52. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

12 53. Defendants have engaged and continue to engage in unfair and/or unlawful
13 business practices in California in violation of Business and Professions Code § 17200 *et seq.* by:
14 (a) failing to provide Plaintiffs and members of the Meal Period Class with all meal periods to
15 which they are entitled, or failing to pay them meal period premium payments in lieu thereof; (b)
16 failing to authorize and permit all required duty-free rest periods to Plaintiffs and members of the
17 Rest Period Class, and/or failing to pay them rest period premiums payments in lieu thereof; (c)
18 failing to reimburse all necessary business expenditures to Plaintiffs and members of the
19 Employee Expense Class; (d) failing to furnish Plaintiff Chavez and members of the Wage
20 Statement Class accurate and itemized wage statements; (e) failing to timely pay all wages owed
21 upon separation to Plaintiffs and members of the Waiting Time Class; (f) failing to pay all
22 minimum wages owed to Plaintiff Mazariegos and members of the Minimum Wage Class; (g)
23 failing to pay all overtime wages to Plaintiff Mazariegos and members of the Overtime Class; and
24 (h) paying Plaintiff Chavez and members of the Waiting Time Class their final wages on a pay
25 card without their consent.

26 54. Defendants' utilization of these unfair and/or unlawful business practices deprived
27 Plaintiffs and continues to deprive members of the Classes of compensation to which they are
28 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage

over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

55. Because Plaintiffs are a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

56. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

57. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

58. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

59. Defendants have committed Labor Code violations against Plaintiffs and other aggrieved employees. Plaintiff Chavez is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, and acting on behalf of herself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff Chavez and other aggrieved employees against whom one or more of the violations has been committed, and the State of California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent

violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff Chavez and other aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- b. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff Chavez and other aggrieved employees in violation of Labor Code §§ 226.7, 516, and 558;
- c. Failing to reimburse Plaintiff Chavez and other aggrieved employees for all necessary business expenses in violation of Labor Code §§ 1198, 2802 and 2804;
- d. Failing to furnish Plaintiff Chavez and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to timely pay all final wages and compensation earned by Plaintiff Chavez, and other aggrieved employees at the time of separation of employment in violation of Labor Code §§ 201, 202, and 203;
- f. Failing to pay Plaintiff Chavez and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff Chavez and other aggrieved employees in violation of Labor Code § 1174.

60. On December 5, 2019, Plaintiff Chavez notified Defendant Lincare Inc. via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff Chavez’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor

Code identified in Paragraph 59 (a)-(g) above. Now that sixty-five days have passed from Plaintiff Chavez's notifying Defendants and the LWDA of these violations, Plaintiff Chavez has exhausted her administrative requirements for bringing a PAGA claim for these violations.

61. On February 10, 2020, Plaintiff Chavez filed an action against Defendants in Ventura County Superior Court, Case No. 56-2020-00539898-CU-OE-VTA, seeking PAGA civil penalties based on alleged violations of the Labor Code sections mentioned above (the "PAGA Action"). Pursuant to a stipulation of the parties and subsequent Court order, the statute of limitations period established by the PAGA Action applies to this PAGA cause of action in the instant case. Accordingly, Plaintiff Chavez's PAGA cause of action reaches back to one year prior to the submission of her PAGA letter, or December 5, 2018.

62. Plaintiff Chavez was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff Chavez has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699(g).

EIGHTH CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

63. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

64. Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

65. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff Mazariegos and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and

1 Wage Order 7.

2 66. California Labor Code § 1198 makes unlawful the employment of an employee
3 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
4 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
5 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
6 amount equal to the wages due and interest thereon.

7 67. As a direct and proximate result of Defendants' unlawful conduct as alleged
8 herein, Plaintiff Mazariegos and the Minimum Wage Class have sustained economic damages
9 including, but not limited to, unpaid wages and lost interest, in an amount to be established at
10 trial, and are entitled to recover economic and statutory damages and penalties and other
11 appropriate relief as a result of Defendants' violations of the California Labor Code and Wage
12 Order 7.

13 68. The foregoing practices and policies are unlawful and create an entitlement to
14 recovery by Plaintiff Mazariegos and the members of the Minimum Wage Class in a civil action
15 for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages,
16 statutory and civil penalties, attorney's fees, and costs of suit according to California Labor Code
17 §§ 204, 558, 1194, 1197, and 1198, Wage Order 7, and Code of Civil Procedure § 1021.5.

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

21 69. Plaintiffs re-alleges and incorporates by reference all previous paragraphs.

22 70. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
23 1198, which provide that non-exempt employees are entitled to all overtime wages and
24 compensation for all overtime hours worked and provide a private right of action for the failure
25 to pay all overtime compensation for overtime work performed.

26 71. At all times relevant herein, Defendants were required to properly compensate
27 non-exempt employees, including Plaintiff Mazariegos and members of the Overtime Class, for
28 all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7.

1 Defendants caused Plaintiff Mazariegos to work overtime and hours but did not credit Plaintiff or
2 members of the Overtime Class with all overtime hours actually worked, and did not compensate
3 Plaintiff Mazariegos or members of the Overtime Pay Class at one and one-half times their regular
4 rate of pay for such hours or at double the regular rate of pay for hours worked for such hours.

5 72. The foregoing policies and practices are unlawful and create entitlement to
6 recovery by Plaintiff and the Overtime Class Members in a civil action for the unpaid amount of
7 overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
8 costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code
9 of Civil Procedure § 1021.5.

10 **TENTH CAUSE OF ACTION**

11 **FAIR LABOR STANDARDS ACT VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 73. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
14 forth herein.

15 74. This cause of action is brought pursuant to 29 U.S.C. § 207, which requires
16 employers to pay all non-exempt employees one and one-half times the regular rate of pay for all
17 hours worked in excess of 40 per workweek, as well as minimum wage.

18 75. Plaintiff Mazariegos and members of the Minimum Wage and Overtime Class
19 were required to work on call shifts, where they were required to remain on-call after working a
20 full eight hour shift. Upon information and belief, Defendants only compensated members of the
21 Minimum Wage and Overtime Class for their on-call shifts if they were called into work.
22 Plaintiffs allege that as a result, Defendants failed to pay its employees at least minimum wage
23 for all hours worked as well as all overtime wages earned.

24 76. Defendants' policy and practice of failing to pay the minimum wage for all hours
25 worked, and requiring overtime work and not paying at the proper overtime rate for said work
26 violates the FLSA's overtime requirements including, but not limited to 29 U.S.C. § 207.

27 77. Defendants' policies and practices, as alleged, constitute a willful violation of the
28 FLSA, within the meaning of 29 U.S.C. § 255.

78. Defendants' policy and practice of failing to pay overtime for Plaintiff Mazariegos and members of the Minimum Wage Class and Overtime Class creates an entitlement to recovery by Plaintiff Mazariegos and members of the Minimum Wage Class and Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including liquidated damages, attorneys' fees and costs, per 29 U.S.C. § 216 and interest thereon.

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
9. Upon the Sixth Cause of Action, for restitution to Plaintiffs of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff Chavez, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation

pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for Labor Code violations for which no civil penalty is specifically provided;

11. Upon the Eighth Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

12. Upon the Ninth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

13. Upon the Tenth Cause of Action, for compensatory, consequential, liquidated damages, and general and special damages pursuant to 29 U.S.C. §§ 207 and 216;

14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6, and Civil Code §§ 3287 and 3289;

15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 2802(c), and 2699(g), the FLSA, and Code of Civil Procedure § 1021.5; and

16. For such other and further relief the Court may deem just and proper.

Dated: December 14, 2022

HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiffs

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Dated: December 14, 2022

By:

Paul K. Haines
Attorneys for Plaintiffs