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Attorneys for Plaintiff, on a representative basis and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JIMMY MACIEL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SHAMBAUGH & SON, L.P., a Texas
Limited Partnership; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 20STCV30747
*[Assigned to Hon. Elihu M. Berle, Dept 6 for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing:
Date: June 1, 2023
Time: 9:00 a.m.
Dept.: 6

Complaint Filed: August 19, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
18 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
19 50 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. Over each of the last several consecutive years, I have been selected by my peers
26 as a “Super Lawyer” in Employment Litigation.

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8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$235,781.91, after the deductions set forth in the chart below:

9. The process of mailing the Notice Packets was very successful, as all Notice Packets were deemed deliverable by the Settlement Administrator – a 100% success rate.

11. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited to the claims alleged.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations

submitted in support thereof, Defendant vigorously contested Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND
REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled over 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
4 Counsel is seeking a fee of \$150,000, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$450,000, whereby the Class Members will
8 receive approximately **\$2,405.94 on average** and **up to a maximum of \$9,904** for those
9 employees that worked the entire Class Period. This is an **excellent result** in light of the
10 disputed nature of the claims alleged. This result was achieved by the work and success of my
11 office, who negotiated the settlement after extensive litigation, discovery, preparation,
12 investigation, mediation, and substantial work thereafter.

13 18. Second, Plaintiff faced significant risks going forward with the litigation. As
14 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
15 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
16 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
17 going forward with this litigation, and it would have taken several more years to realize any
18 recovery in this action along with the possibility of post-trial appeals.

19 19. Third, Class Counsel are experienced class action litigators. This experience and
20 expertise, combined with the high quality of work performed in this case, resulted in the
21 settlement achieved in this case.

22 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
23 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
24 substantial amount of time, money, and resources, and have done so since the inception of this
25 case without any payment or compensation. If Plaintiff had lost this case, we would have
26 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
27 my office, which is a small firm. If, despite these hardships and risks, the best my office could
28 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for

1 the hardships and serious risks we faced litigating this contingency case, and would not be
2 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
3 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
4 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
5 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
6 only one-third of class actions are successful, compared to two-thirds that are defeated and result
7 in no payment to the class members.

8 21. Fifth, the request for attorney's fees in the amount of one-third of the common
9 fund falls well within the norms accepted by state and federal courts in California in comparable
10 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
11 recovery under the common fund doctrine was recently approved by the California Supreme
12 Court in *Laffitte, supra*, 1 Cal.5th 480, 503.

13 22. For all of the above reasons, a common fund fee award here in the amount of one-
14 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

15 23. At my office, this case was primarily handled by my senior associate attorney,
16 Peter Carlson, while I performed the role of the supervising attorney. As set forth in his
17 declaration, Mr. Carlson works exclusively with me on employment law matters and has been in
18 practice for 8 years. He bills at the hourly rate of \$575/hour. I have been in practice for 22
19 years, with most of those years handling complex litigation and for over the last 15 years, my
20 practice has almost entirely consisted of handling class action wage and hour matters. My billing
21 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
22 handle complex class action litigation, if not somewhat lower.

23 24. The hourly rates above are comparable to those of other attorneys with equal or
24 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
25 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
26 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
27 Real Rate Report ("Real Rate Report"), provides directly applicable information in this regard.
28 The Real Rate Report is based on an enormous and statistically significant compilation of data.

For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. In 2018, for the southern California area, which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked, plus an estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the Settlement Administrator and defense counsel to finalize this matter. the actual aggregated lodestar between the attorneys that have worked on this case is approximately \$158,505, resulting in a *negative multiplier*, which is summarized in the following table:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	87²	\$67,425
Peter J. Carlson <i>Senior Associate</i> (8 Years)	\$575	158.4	\$91,080
Grand Total for All Attorneys			\$158,505

² Includes an estimated 30 hours of future work that will be expended, including 10-15 hours through the final approval hearing (inclusive of updating the declarations through the end of the Notice period, appearing at the hearing, addressing the Court's questions/concerns, possibly submitting revised documents, responding to class members who are anxious to receive their check, and so on) and 20 hours after the final approval hearing (which includes 1.5 to 2 years of case management relating to ensuring timely payment from Defendant, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto.

1 26. The fee is warranted because of the results achieved for the Class Members, both
2 in terms of the immediate cash settlement, as well as the fact that the Class Members
3 resoundingly supported the Settlement. Defendant does not oppose this fee request.

4 27. In the course of prosecuting this action, Class counsel have incurred expenses that
5 were incidental and necessary to the effective representation of the Class. These expenses
6 included but were not limited to: court filings, messenger services, postage, fax transmission
7 expenses, transportation, mediator fees, and other incidental expenses directly related to this
8 action. The Settlement Agreement provided up to \$15,000 in costs. Through final approval, my
9 office incurred \$12,157.93 in litigation costs (see Exhibit "B" attached hereto). The saving will
10 be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not
11 oppose this request for costs.

12 **REASONABLENESS OF REQUESTED SERVICE AWARD**

13 28. I also believe that the service award of \$5,000 to Plaintiff is fair and warranted for
14 the reasons outlined in his declaration and in the motion. He came forward and worked directly
15 with our offices in analyzing the claims and documents, providing valuable information. (See
16 his declaration for supporting information.) Indeed, his participation was an essential element of
17 Defendant's desire to mediate and of the pre and post mediation analysis that allowed Class
18 Counsel to settle the case. Of course, he also took on various risks, including the risk that he
19 could have been ordered to pay Defendant's costs if he lost and the risk of retaliation and being
20 black-balled in the industry. He also provided a full release of all claims. Defendant does not
21 oppose the requested service award.

22 **SUBMISSION TO THE LWDA**

23 29. The Motion and declarations, including the Settlement Agreement, have
24 concurrently been submitted to the LWDA. (See Exhibit "C").

25 **EXHIBITS AND CONCLUSION**

26 30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
27 "A."
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31. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement of my firm’s litigation costs.

32. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "C."

33. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys fees, costs, and service award.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 30, 2023, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Jimmy Maciel (“Plaintiff”) and Shambaugh & Son, L.P. (“Defendant”). Plaintiff and Defendant shall collectively be referred to as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Jimmy Maciel v. Shambaugh & Son, L.P.*, which was initiated on August 19, 2021 and pending in Superior Court of the State of California, County of Los Angeles, Case No. 20STCV30747.

1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Agreement” or “Settlement Agreement” shall mean this Class Action and PAGA Settlement Agreement, including the Class Notice.

1.5. “Aggrieved Employee” means all current and former non-exempt/hourly employees of Defendant, who are not represented by any union (i.e., non-union employees) and who worked for Defendant in California at any time during the PAGA Period.

1.6. “Class” consists of all current and former non-exempt/hourly employees of Defendant, who are not represented by any union (i.e., non-union employees) and who worked for Defendant in California at any time during the Class Period.

1.7. “Class Counsel” means Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP.

1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.9. “Class Data” means a complete list that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator on one spreadsheet which shall include the Class Member identifying information in Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, number of hours worked during the Class Period, and number of Pay Periods Worked during the PAGA Period.

1.10. “Class Member” or “Settlement Class Member” means a member of the Class, as

either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12. “Class Notice” means the court approved notice of class action settlement to be mailed to Class Members in English only in the form attached as Exhibit A and incorporated by reference into this Agreement.

1.13. “Class Period” means the period from August 19, 2017, to November 30, 2022.

1.14. “Class Representative” and “Plaintiff” each mean Jimmy Maciel.

1.15. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.16. “Complaint” refers to the operative first amended complaint filed in the Action, alleging class action and representative PAGA action claims, which is pending in the Court and designated as Case No. 21STCV30747.

1.17. “Court” means the Superior Court of California, County of Los Angeles.

1.18. “Defendant” means Shambaugh & Son, L.P.

1.19. “Defense Counsel” means Littler Mendelson, P.C.

1.20. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.21. “Exclusion List” means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

1.22. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.23. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.24. “Final Judgment” means the Judgment Entered by the Court upon Granting Final

Approval of the Settlement.

1.25. “Gross Settlement Amount” or “GSA” means \$450,000, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below and except for the employer’s share of applicable payroll tax obligations that Defendant shall separately pay. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.26. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of hours worked during the Class Period.

1.27. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods Worked during the PAGA Period.

1.28. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.29. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.30. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.31. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.32. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.33. “PAGA Period” means the period from August 18, 2020, to November 30, 2022.

1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.35. “PAGA Notice” means Plaintiff’s August 18, 2021, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$40,000), allocated 25% to the Aggrieved Employee (\$10,000) and the 75% to LWDA (\$30,000) in settlement of PAGA claims.

1.37. “Participating Class Member” means all Settlement Class Members except for

those who opt-out by submitting a timely valid Request for Exclusion.

1.38. “Pay Periods Worked” means all pay periods during which the Aggrieved Employee was employed by Defendant as a non-exempt, non-union employee in California and worked at least one shift.

1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.40. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.41. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

1.42. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.

1.43. “Released Parties” means: Defendant and each of its former and present directors, officers, partners, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates and parents (including EMCOR Group, Inc.).

1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.45. “Response Deadline” means 45 days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.46. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.47. “Weekly Report” refers to the report that the Administrator must email to Defense Counsel and Class Counsel on a weekly basis that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to credited (i) hours worked during the Class Period or (ii) Pay Periods Worked during the PAGA Period, received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments. The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

2. RECITALS.

2.1. On August 19, 2021, Plaintiff commenced this Action by filing a complaint alleging class action causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Pay Vested Vacation; (6) Failure to Timely Pay Final Wages; (7) Failure to Provide Accurate Itemized Wage Statements; and (8) Unfair and Unlawful Competition. On November 8, 2021, Plaintiff filed a first amended complaint that added the PAGA claims (the operative first amended complaint shall be referred to as the “Complaint”). Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On August 30, 2022, the Parties participated in an all-day mediation presided over by Jeff Ross, which culminated in a mediator’s proposal. The Parties accepted the proposal and thereafter entered into this Agreement to settle the Action.

2.4. Prior to the mediation and negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, documents and information, including but not limited to Defendant’s written policies and practices, information relating to the size of the Class and Aggrieved Employees, number of Pay Periods Worked, as well as a sampling of payroll and timekeeping records. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant agrees to pay \$450,000 and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of

not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the GSA (33.333%), which is currently estimated to be \$150,000 and a Class Counsel Litigation Expenses Payment of not more than \$15,000. Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,060.16 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,060.16, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of hours worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Pay hours worked.

3.2.4.1. Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining ninety percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest (10%) and penalties (80%) (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of Pay Periods Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods Worked. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Pay Periods Worked. (See paragraph 9 below.)

4.2. Class Data. Not later than ten (10) business days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than ten (10) business days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within ten 10 business days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation

Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will also send checks for Individual PAGA Payments to all Aggrieved Employees. If the recipient is both a Participating Class Member and Aggrieved Employees, the Payments may be contained on one check. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California State Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount, including employer payroll taxes owed on the wage-allocated portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge the Released Parties from all claims and causes of action in the Action, and all claims and causes of action that could have been pleaded based on the factual allegations in the Action.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the operative Complaint, including claims for overtime; minimum wages; meal period premiums; rest break premiums; vested vacation; wage statements; waiting time penalties; expense reimbursement; and based on violations of Labor Code sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, or Industrial Welfare Commission Order #4, or Business and Professions Code section 17200, et seq., which are premised on the same allegations, and Cal. Code Regs., tit. 8, section 11090 (the "Released Class Claims"). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including violations premised on violation of Labor Code sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, and Cal. Code Regs., tit. 8, section 11090 (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is the PAGA Period.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

7.1 Defendant's Declaration in Support of Preliminary Approval. Within 15 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any

actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendant shall advise that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel attesting to its competency to represent the Class Members and its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations, operative Complaint, and this Agreement); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. While Class Counsel will draft the motion, Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator, and all related documents.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected the Administrator to serve and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange

for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, hours worked in the Class Period and Pay Periods Worked in the PAGA Period, in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than ten (10) business days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A, or as modified by the Court and agreed to by the Parties. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of hours worked during the Class Period and Pay Periods Worked during the PAGA Period (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Pay Periods Worked, and Requests for Exclusion will be extended an additional 14 calendar days beyond the Response Deadline otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, Defense Counsel, Class Counsel or Defendant is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and

confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional [14] days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Hours Worked During Class Period Or Pay Periods Worked During PAGA Period. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Pay Periods Worked that were allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via

fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the hours worked during the Class Period and Pay Periods Worked during the PAGA Period contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of hours worked during the Class Period and Pay Periods Worked during the PAGA Period shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of hours worked during the Class Period and Pay Periods Worked during the PAGA Period to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email the Exclusion List to Class Counsel and Defense Counsel containing (a) the Exclusion List containing names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion; (b) the names and other identifying

information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Pay Period And Hours Worked Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of hours worked and Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and a copy of the Exclusion List. The Administrator must also provide a breakdown of the Gross Settlement Amount, high/low/average payments to Participating Class Members, the total Pay Periods Worked by Class Members and Aggrieved Employees and the per Pay Period value of each. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Defendant represents that, as of the execution of this Agreement, there are approximately 97 individuals in the Settlement Class who, collectively, worked approximately 295,224 hours during the Class Period. Defendant further represents that there are 64 Aggrieved Employees who, collectively, worked approximately 2,543 pay periods during the PAGA Period. If the Settlement Class headcount estimate (97) increases by more than 10% through and including November 30, 2022, then the GSA will increase proportionally for the Settlement Class headcount increase in

excess of the 10% threshold (*i.e.*, an 11% increase in the Settlement Class headcount will result in a 1% increase to the GSA). If the estimate of pay periods during the PAGA Period (2,543) increases by more than 10% through and including November 30, 2022, then the GSA will likewise increase proportionally for the pay periods during the PAGA Period in excess of the 10% threshold (*i.e.*, an 11% increase in the number of pay periods during the PAGA Period will result in a 1% increase to the GSA).

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 5 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and

Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association,

government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be

relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. Class Counsel and Plaintiff agree that they will not issue any press release, press statement, initiate media coverage, respond to any media inquiries or make any website or social media postings regarding the Lawsuit, or the settlement of this Lawsuit.

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 Calendar Days. Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger,

addressed as follows:

To Plaintiff:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444

To Defendant:

Josh Kienitz
jkienitz@littler.com
Littler Mendelson, P.C.
501 W. Broadway, Suite 900
San Diego, CA 92101.3577
Tel: (619) 232-0441

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree, upon the signing of this Agreement and pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

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[Signatures on following page]

Dated: November __8__, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:


Jimmy Maciel (Nov 8, 2022 09:33 PST)

Jimmy Maciel

Dated: November __8__, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

Dated: November ____, 2022

DEFENDANT:
SHAMBAUGH & SON, L.P.

William J. Meyer
Sr. Vice President & General Counsel

Dated: November ____, 2022

DEFENDANT'S COUNSEL:
LITTLER MENDELSON, P.C.

Joshua D. Kienitz
Attorneys for Defendant

END OF DOCUMENT

Dated: November __, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

Jimmy Maciel

Dated: November __, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

Dated: November 2, 2022

DEFENDANT:
SHAMBAUGH & SON, L.P.



William J. Meyer
Sr. Vice President & General Counsel

Dated: November 3, 2022

DEFENDANT'S COUNSEL:
LITTLER MENDELSON, P.C.



Joshua D. Kienitz
Attorneys for Defendant

END OF DOCUMENT

Exhibit “A”

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Maciel, et. al. v. Shambaugh & Son, L.P.

(Los Angeles Superior Court, Case No. 20STCV30747)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Shambaugh & Son, L.P. (“Defendant” or “Shambaugh”) for alleged wage and hour violations. The Action was filed by Jimmy Maciel a former Shambaugh employee (“Plaintiff”) and seeks payment of (1) unpaid wages, statutory damages, interest and attorneys’ fees on behalf of a class of non-exempt/hourly employees of Shambaugh, who are not represented by any union (i.e., non-union employees) and who worked in California (“Class Members”) during the Class Period (August 19, 2017 to November 30, 2022); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt/hourly employees of Shambaugh, who are not represented by any union (i.e., non-union employees) and who worked in California during the PAGA Period (August 18, 2020 to November 30, 2022) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Hours Worked During Class Period (Class Member); Pay Periods Worked During PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the hours and pay periods worked you are credited with working during the Class Period and PAGA Period, respectively, according to Defendant’s records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work

during the PAGA Period.)

If you believe that you worked more Pay Periods during either period than Defendant's records show, you can submit a challenge by **DATE**, 2023 ("Response Deadline"). See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT (EXCLUDE YOURSELF) DEADLINE: DATE , 2023	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT DEADLINE: DATE , 2023	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
DISPUTE YOUR HOURS OR PAY PERIODS	If you believe that your number of hours or pay periods worked listed above is incorrect, you may challenge it. The amount of your Individual Class

WORKED DEADLINE: , 2023	Payment and PAGA Payment (if any) depend on how many hours you worked during the Class Period and how many Pay Periods you worked during the PAGA Period, respectively. The numbers you are credited are shown in the chart on the first page, and are based on Defendant's records. If you disagree with either of these numbers, you must challenge it by the deadline. See Section 4 of this Notice.
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Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: , 2023 TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Shambaugh employee. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and reimbursable expenses, and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

Plaintiff is represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount

considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$450,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$150,000 (one-third of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$5,000 as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$7,060.16 to the Administrator for services administering the Settlement.
 - D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Pay Periods Worked during the PAGA Period.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their hours worked during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and 90% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over hours and pay periods worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, including claims for overtime; minimum wages; meal period premiums; rest break premiums; vested vacation; wage statements; waiting time penalties; expense reimbursement; and based on violations of Labor Code sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, or Industrial Welfare Commission Order #4, or Business and Professions Code section 17200, et seq., which are premised on the same allegations, and Cal. Code Regs., tit. 8, section 11090 (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases are as follows:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, including violations premised on violation of Labor Code sections 200, 201-204, 204.1, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, IWC Wage Order 9, including §§ 3(A), 4, 3(A), 11, 12, and Cal. Code Regs., tit. 8, section 11090 (the "Released PAGA Claims"). The operative release period for the Released PAGA Claims is the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of hours worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of hours worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of Pay Periods Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Pay Periods Worked by each individual Aggrieved Employee during the PAGA Period.
3. Hours Worked and Pay Period Challenges. The number of hours you worked during the Class Period, and the number of pay periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ ("Response Deadline") to challenge the number of hours or pay periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of hours and pay periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Maciel v. Shambaugh & Son, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by INSERT DATE (the "Response Deadline"), or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 court days before the INSERT DATE Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative

Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website INSERT URL or the Court's website INSERT URL.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Class Representative Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is INSERT DATE (the "Response Deadline")**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action Maciel v. Shambaugh & Son and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on INSERT DATE at INSERT TIME in Department XX of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

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

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at INSERT URL. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 20STCV30747. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT.**

The contact information for Class Counsel and the Settlement Administrator are below:

<u>Class Counsel:</u>
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

<u>Settlement Administrator:</u>
Phoenix Settlement s Administrators Email Address Mailing Address Telephone Number Fax Number Case URL

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00464 Maciel v Shambaugh (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Jimmy Maciel</u>									
<u>14000-00464 Maciel v Shambaugh</u>									
08-16-2021	Approved		Non-Billable	E101 Copying	Grossi, Tracie L.	0.20	0.00	48.00	9.60
48 copies @ \$0.20 for Letters to Employer									
08-16-2021	Approved		Non-Billable	E108 Postage	Grossi, Tracie L.	14.94	0.00	1.00	14.94
July 2021 Postage (Rec. Request)									
08-18-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	75.00	0.00	1.00	75.00
LWDA Order Number: ORD-000131525 to submit LWDA letter Case Number LWDA-CM-841832-21									
08-19-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	12.35	0.00	1.00	12.35
OneLegal Order #16779440 to Submit Complaint for Filing									
08-20-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	1,463.50	0.00	1.00	1,463.50
Los Angeles County Superior Court to file Complaint Receipt No: ST-2021-0359830									
08-26-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	6.75	0.00	1.00	6.75
Los Angeles County Superior Court to File POS Receipt No: ST-2021-07?87991									
08-26-2021	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	148.70	0.00	1.00	148.70
Bosco Inv 6039582 Serve: Shambaugh & Son, L.P., a Texas Limited Partnership Summons; Complaint: Civil Case Cover Sheet: Civil Case Cover Sheet Addendum and Statement of Location; Notice of Case Assignment Unlimited Civil Case; ADR Court: Los Angeles County Superior Court - Central District									
08-31-2021	Approved		Non-Billable	E108 Postage	Aguilera, Monica A	15.74	0.00	1.00	15.74
August 2021 Postage									
10-28-2021	Approved		Non-Billable	E125 Mediation fees	Aguilera, Monica A	9,000.00	0.00	1.00	9,000.00
Mediation with Jeffrey Ross 8-30-2022									
11-02-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	16.68	0.00	1.00	16.68
OneLegal Order #17159426 to File Joint Statement									
11-08-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	16.68	0.00	1.00	16.68
OneLegal Order #17195758 to File Ntc of Ruling and FAC									

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00464 Maciel v Shambaugh
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<i>Jimmy Maciel</i>									
<u>14000-00464 Maciel v Shambaugh</u>									
02-04-2022	Approved		Non-Billable	Attorney Service	Aguilera, Monica A	122.40	0.00	1.00	122.40
Case Anywhere Inv #244654									
05-10-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	120.00	0.00	1.00	120.00
Case Anywhere Inv #253033									
08-02-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	17.19	0.00	1.00	17.19
OneLegal Order #18663811 - File Ntc of COA									
08-05-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	120.00	0.00	1.00	120.00
CaseAnywhere Inv #261485 - System Access Fee for July 2022									
09-07-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87
OneLegal Order #18875366 - submit stip to continue CMC									
09-07-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	17.19	0.00	1.00	17.19
OneLegal Order #18875936 - File Notice of Settlement									
11-09-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	132.00	0.00	1.00	132.00
CaseAnywhere Inv #270168									
11-17-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	78.96	0.00	1.00	78.96
OneLegal Order #19326590 - file Motion for Preliminary Approval									
12-20-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87
OneLegal Order #19498564 - file supp declaration									
12-20-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	17.19	0.00	1.00	17.19
OneLegal Order #19500763 - resubmit supp declaration									
01-18-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	17.66	0.00	1.00	17.66
OneLegal Order #19653307 - file Dec of BJM re OSC									
01-24-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	17.66	0.00	1.00	17.66

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00464 Maciel v Shambaugh
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Jimmy Maciel</u>									
<u>14000-00464 Maciel v Shambaugh</u>									
OneLegal Order #19708156 - file 2ns Supp Dec and Order re MPA									
02-09-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	192.00	0.00	1.00	192.00
CaseAnywhere Inv #278727									
03-30-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	100.00	0.00	1.00	100.00
Estimated cost for OneLegal to file MFA and related documents									
03-30-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	400.00	0.00	1.00	400.00
Estimated costs for CaseAnywhere to serve MFA and related documents									
Project Total									12,157.93
Client Total									12,157.93
Grand Total									12,157.93

EXHIBIT “C”