

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY, LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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. Judge Elihu M. Berle, Dept
6, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: January 17, 2023

Time: 11:00 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 manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and 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 Preliminary 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 over 500 employee vs. employer litigation matters during my 21
7 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. In this regard, I’m attaching as **Exhibit “1”**
13 a list of over 130 resolved/settled class actions, collective actions and/or PAGA actions that I’ve
14 handled in the last 10 years. This list excludes currently active cases, as well as cases that I
15 handled prior to 2010.

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

23 5. I have tried two major class and PAGA cases against Fortune 100 companies over
24 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
25 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
26 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
27 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
28 the PAGA case was reversed and remanded.

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

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. As requested by the Court’s model form agreement, I hereby represent that I am
5 unaware of any other pending matter or action asserting claims that will be extinguished or
6 adversely affected by the Settlement. Moreover, I have no personal or financial interest in the
7 Administrator.

8 8. Following a contested litigation process, Plaintiff and Defendant (collectively,
9 the “Parties”) entered into a Class Action and PAGA Settlement Agreement based on the new
10 LA model agreement (the “Settlement Agreement” or “S.A.”), which is attached hereto as
11 **Exhibit 2**. To facilitate the Court’s review of the S.A., a redlined version is attached as
12 **Exhibit 3** showing the changes that were made to the model class and PAGA settlement
13 agreement.

14 9. The Settlement Agreement seeks to release and discharge Defendant from the
15 claims brought against it in exchange for Defendant’s agreement to pay \$450,000 on a non-
16 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
17 Settlement Amount without having to submit a claim form or take any action, except for those
18 who opt-out). Plaintiff seeks to represent a class of all current and former employees employed
19 by Defendant Shambaugh & Son, L.P., who are not represented by any union (i.e., non-union
20 employees) and who worked for Defendant in California at any time from August 19, 2017, to
21 November 30, 2022 (the “Class Period”). Under the terms of the Settlement Agreement,
22 Defendant will not oppose Plaintiff Counsel’s application for a reasonable award of attorney’s
23 fees not to exceed \$150,000 (1/3 of the Gross Settlement Amount), litigation expenses not to
24 exceed \$20,000, Settlement Administrator Costs of \$7,060.16, PAGA penalties of \$40,000
25 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a
26 Service Payment of \$5,000 to Plaintiff Jimmy Maciel (“Class Representative”). (S.A. ¶ 3.2 et
27 seq.). After subtracting the agreed-upon deductions from the Settlement Amount,
28 approximately \$232,939.84 will be available to pay the individual settlement amounts to

approximately 100 Class Members who do not opt-out of the settlement, as follows:

Gross Settlement Amount	\$ 450,000.00
Attorneys' Fees (1/3)	\$ 150,000.00
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 7,060.16
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 5,000.00
Net Settlement Amount	\$ 232,939.84

10. As set forth in the Settlement Agreement at ¶ 9, Assuming 100 Class Members, the average payment to each Class Member will be approximately \$2,329.40 (\$232,939.84 / 100). However, the actual payment will be calculated on a pro-rata basis according to the number of hours each Class Member worked during the Class Period, with each hour worked having a value of approximately \$0.79/hour (\$232,939.84 / 295,224 total hours worked), which is equivalent to \$19.75/week worked (\$0.79/hour x 8 hours per shift x 5 shifts in a week)¹. In addition, approximately 65 Aggrieved Employees will receive a share of the \$10,000 PAGA Penalties (25% of the total \$40,000 PAGA allocation), calculated pro-rata based on approximately 2,543 Pay Periods Weeks Worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Pay Periods he/she is credited with working during the Class Period (attached to the Settlement Agreement as Exhibit "A").

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested

¹ Defendant preferred using an "hours worked" metric as that would most accurately track a pro rata distribution based on the actual amount of time each Class Member worked during the Class Period, whereas a metric based on weeks worked or pay periods worked would not be quite as accurate if, for example, an employee only worked one day during a week and took vacation the other days.

1 legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

2 13. After being retained by Plaintiff, we sent a letter to Defendant requesting the
3 production of Plaintiff's personnel and timekeeping records in order to further evaluate his wage
4 and hour claims. On August 18, 2021, we submitted a letter to the California Labor Workforce
5 Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act
6 of 2004 (the "PAGA"), which is attached hereto as **Exhibit 4**.

7 14. On August 19, 2021, Plaintiff commenced this Action by filing a complaint
8 alleging class action causes of action against Defendant for (1) Failure to Pay Minimum Wages;
9 (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide
10 Rest Breaks; (5) Failure to Pay Vested Vacation; (6) Failure to Timely Pay Final Wages; (7)
11 Failure to Provide Accurate Itemized Wage Statements; and (8) Unfair and Unlawful
12 Competition. On November 8, 2021, Plaintiff filed a first amended complaint that added the
13 PAGA claims (the operative first amended complaint shall be referred to as the "Complaint").

14 15. Defendant retained counsel and immediately began to defend the case. Then,
15 after early discussions among counsel, the Parties agreed to attend private mediation.

16 16. In preparation for the mediation, the Parties informally exchanged documents and
17 information that allowed both sides to calculate the potential damages and evaluate potential risk,
18 including policies and procedures pertaining to each claim alleged, and statistics relating to the
19 number of current and former employees, number of shifts, pay periods worked and other things.
20 Defendant also provided their written policies and practices and a robust sampling of payroll and
21 timekeeping records for Class Members. This information enabled both parties to take a deep
22 dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
23 researched, and investigated the potential issues, including matters related to the calculation of
24 damages, trial, and appellate issues and risks.

25 17. On August 30, 2022, Plaintiff and Defendant participated in mediation before Jeff
26 Ross, a highly regarded wage-and-hour mediator. The matter resolved at mediation pursuant to a
27 mediator's proposal which was accepted by both Parties.

28 ///

1 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL’S INVESTIGATION**

2 18. The putative Class in this case consists of approximately 100 similarly situated
3 Class Members. However, Defendant vigorously contested and denied the allegations on the
4 merits and as to the propriety of a class action or PAGA representative action on behalf of the
5 putative class and allegedly aggrieved employees.

6 19. One of the primary claims in this action was for wage statement violations due to
7 Defendant’s alleged failure to state: (1) the pay period start date, and (2) the company’s name
8 and address. Defendant disputed Plaintiff’s claim and specifically disputed that the wage
9 statements were inaccurate or that they otherwise failed to comply with Labor Code section 226.
10 Furthermore, Defendant contends that, even if Plaintiff could identify a technical error in some
11 employees’ wage statements, Plaintiff’s claims still fail for multiple reasons, including without
12 limitation, because Plaintiff cannot establish a “knowing and intentional” violation or that
13 Plaintiff and other employees suffered an “injury” as required by Labor Code section 226(e).
14 Defendant further contended that class treatment was inappropriate and that this matter could not
15 be manageably litigated on a representative basis.

16 20. Plaintiff also argued that the Class Members were often denied compliant meal
17 and rest breaks due to the nature of the work. However, Defendant argued that it provided and
18 made available meal and rest breaks to all employees, and any employee who did not take a meal
19 or rest break did so entirely of his or her own volition. In this regard, Defendant produced its
20 written policies and practices, which it argued show full compliance with the law. As such,
21 Defendant argued that these claims were without merit because, for each violation, a fact-finder
22 would have to determine why a break was noncompliant/nonexistent, because if it was by the
23 employee’s choice, no liability attaches to the Defendant.

24 21. Additionally, Plaintiff alleged that Defendant failed to pay all required minimum
25 and overtime wages because of the failure record and compensate for all hours worked. For
26 instance, Plaintiff alleged that Defendant used a “rounding” policy that only paid the Class in
27 quarter- or half-hour increments. But Defendant vehemently opposed these claims and argued
28 that it had a written policy that strictly prohibited any off-the-clock work and that there was no

1 rounding policy that deprived the Class of wages.

2 22. Furthermore, Plaintiff alleged that Defendant failed to pay all vested and accrued
3 vacation to Class Members that separated from their employment. However, Defendant argued
4 that this violation (if there was one) was individualized to Plaintiff; other Class Members were
5 paid in full for all vested and accrued vacation upon separation of employment, in line with
6 Defendant's written policy which stated "Employees will be paid for their accrued but unused
7 vacation at the time of termination.

8 23. Plaintiff also alleged various other Class and PAGA claims, such as the failure to
9 timely pay all wages each period and upon separation of employment, in violation of Labor Code
10 §§ 201 - 204. However, Defendant argued that these other claims, as well as the "derivative"
11 claims, have no merit.

12 **EVALUATION OF THE SETTLEMENT**

13 24. In preparation for mediation, Peter Carlson, a senior associate within my office,
14 our co-counsel, and I formulated a damages model and risk analysis based upon detailed data
15 obtained through informal discovery and information exchanges. The summary of the claims
16 below is based on calculations by our expert and us, and the risks that we potentially faced,
17 giving significant credit to the defenses that Defendant raised or would like raise in further
18 proceedings. Following the informal exchange and other information provided by Defendant, we
19 estimated the following data points through the date of mediation: (1) 68 class members, (2) 39
20 class members that separated from employment during the 3-year lookback for Labor Code §
21 203, (3) 2,376 workweeks, (4) 26,299 shifts worked, and (4) approximately 1,188 wage
22 statements during the PAGA Period. From these metrics, and when factoring in claim
23 certification probabilities and liability probabilities, we formulated detailed damages models to
24 value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

25 25. Plaintiff contended that his strongest claim was for wage statement violations due
26 to the failure to include the pay period start date *and* the employer name/address on paystubs.
27 On a Class basis, Plaintiffs' counsel calculated the maximum potential statutory violations for
28 this claim at time of mediation as \$97,500 (under Labor Code § 226(e), with \$50 for 50 initial

violations and \$100 for each of the remaining 950 violations). However, this theoretical maximum fails to account for the variety of risks and defenses raised by Defendant, namely that the wage statements did not violate Labor Code § 226 and, even if there was a “technical” violation, that Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements. Additionally, Defendant contended that (without admitting liability), it modified the format of its wage statements during the relevant period to include all required information under § 226 (which is why Plaintiff’s *maximum* calculations use only 1,000 wage statements rather than the 1,188 figure for PAGA pay periods). Based on these facts and defenses, Plaintiff placed a nominal 5% risk at the class certification stage and estimated a 90% chance of success on the merits, leading to a risk-adjusted value of \$83,363 for the wage statement claims.

26. Plaintiff also alleged meal and rest break claims against Defendant. Given the total number of shifts at issue, and when incorporating violation rates from the timekeeping records and other evidence, Plaintiff’s counsel estimated a 80% violation rate for each claim, leading to 21,039 alleged meal violations and 21,039 alleged rest break violations. This established a maximum potential value for these claims of \$979,164 (using \$23.27 as the applicable premium rate under § 226.7). However, Defendant raised numerous arguments in response to this claim, including that it: (1) maintained fully compliant written policies, (2) posted the applicable IWC Wage Order at the worksite, (3) specifically authorized the Class Members to take meal and rest breaks, and (4) scheduled meal and rest breaks for all employees at the same time, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee’s choice, no liability attaches to Defendant. These defenses are factored into Plaintiff’s analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs placed a 40% risk at the class certification stage. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As

1 such, Plaintiff placed a 40% risk on the merits, setting the risk-adjusted value for the meal and
2 rest break claims at \$352,500.

3 27. Additionally, Plaintiff alleged that Defendant failed to pay all wages owed and,
4 after investigating the alleged frequency of violations, Plaintiff's counsel estimated that there
5 were an alleged 2,192 unpaid hours during the Class Period at an applicable rate of pay of
6 \$47.91.² Thus, the maximum potential value for the unpaid wage claims was \$104,998.
7 However, Defendant vehemently opposed these unpaid wage claims by arguing that it had
8 policies to pay employees for all hours worked and other policies requiring employees to
9 accurately record their own hours worked. Thus, Defendant argued that there was no "off-the-
10 clock" time and, even if there were, it had no actual or constructive notice of the same and would
11 not be liable. As such, Defendant alleged that, due to these defenses, Plaintiff's claims are the
12 prototypical example of "individualized issues" for which certification would not be proper.
13 Thus, Plaintiff placed a 30% risk on these claims at the class certification stage. Moreover, in
14 addition to its other defenses on the merits, Defendant argued that Plaintiff would be unable to
15 meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class
16 would be unable to identify when these alleged wage violations occurred (since the claims are
17 not apparent from the timekeeping records), thus defeating liability. For this reason, Plaintiff's
18 counsel assigned another 30% risk on the merits. When factoring in these risks and defenses,
19 Plaintiff calculated the risk-adjusted value of the unpaid wage claims to be \$51,444.

20 28. Plaintiff also alleged that Defendant failed to pay all vested vacation wages due
21 and owing upon separation of employment under Labor Code § 227.3. This claim was based on
22 Defendant's documents showing that Plaintiff was allegedly required to forfeit 22.5 hours during
23 the calendar year transition from 2020 to 2021 and that, on termination, he was then unpaid for
24 those forfeited wages. Plaintiff's individual alleged losses in this regard were \$483.75 [22.5
25 forfeited hours x \$21.50 rate of pay]. However, leading up to and at mediation, Defendant
26 argued and provided documentation showing that this issue was specific and individualized to
27 Plaintiff, and that the alleged forfeiture was merely a clerical error. Defendant further argued
28

² Since these unpaid hours were alleged to occur *after* 8 hours in a day, this blended rate is the overtime rate plus liquidated damages (for unpaid minimum wages) under Labor Code § 1194.2.

1 that the error was likely only a *display issue* in that calculations for Plaintiff's final PTO payout
2 included the hours that allegedly disappeared between 2020 and 2021. To further support the
3 defense that this was individualized, Defendant produced its written policies which did not
4 contain any forfeiture or "use-it-or-lose-it" provisions; instead, the policy merely placed a cap on
5 accrual that Defendant contended was legal under *Boothby v. Atlas Mechanical, Inc.* (1992) 6
6 Cal.App.4th 1595 among other cases. Although Plaintiff did not concede on the merit of these
7 claims entirely, Plaintiff's counsel factored these defenses heavily into the valuation of this claim
8 and placed a small risk-adjusted value of only \$10,000 on these claims.

9 29. Finally, Plaintiff alleged that Defendant failed to timely pay all wages owed to the
10 Class Members upon separation of employment since the Class Members. The maximum
11 potential value of this claim was \$231,420 based on 39 *former* employees being entitled to the
12 full waiting time penalty of 30 days of pay. But this maximum value failed to account for many
13 risks and defenses. For instance, this claim was derivative of the unpaid wage and meal/rest
14 break claims (*e.g.*, the unpaid wage premiums). If those claims failed at certification or on the
15 merits, there would be no waiting time penalties owed, so the same risks for those claims applied
16 to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at
17 certification and on the merits, Plaintiffs would have to prove that the violations (if any existed)
18 were "willful" under the meaning of Labor Code § 203. And, here, Defendant argued that there
19 could not be a finding of a "willful" violation since they had compliant written policies and any
20 deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff's
21 counsel applied a 20% risk at class certification and a 20% risk on the merits, leading to a risk-
22 adjusted value of \$148,109.

23 30. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
24 estimates the risk-adjusted class recovery as follows:

25	• Wage Statement Claims	\$	83,363
26	• Meal and Rest Break Claims	\$	352,500
27	• Unpaid Wage Claims	\$	51,444
28	• Vested Vacation Claims	\$	10,000

- Waiting Time Penalty Claims \$ 148,109
- **Total Risk Adjusted Penalties and Damages** \$ **645,414**

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

31. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

32. The settlement will result in a fair payment to each class member based on the percentage of time each Class Member worked during the Class Period. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

33. Plaintiff's counsel brought to bear a great deal of experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery and investigation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g. documents pertaining to Defendant's policies and procedures, personnel documents, among others), and conducted an extensive analysis of the detailed class-wide data provided by Defendant.

34. Based on my experience in other cases, including wage and hour matters, I believe I am qualified to evaluate the class claims and viability of defenses in this class action. In this case, the recovery for each class member is reasonable, fair, and adequate, and a

1 settlement at this time is in the best interests of the class. The settlement provides each class
2 member with compensation for the alleged violations when viewed in relation to the costs and
3 risks inherent in obtaining class certification and proceeding to trial.

4 35. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
5 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

6 36. Of course, the settlement amount represents a compromise figure, taking into
7 account the various risks surrounding class certification and the merits of Defendant's asserted
8 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
9 members, with no reversion to Defendant.

10 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

11 37. Plaintiff seeks an enhancement payment of \$5,000 for his service to the class,
12 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
13 and practice change that benefitted all other Class Members, and to recover unpaid wages. He
14 assumed significant risk in bringing this litigation—namely, had he lost, he would have been
15 ordered to pay Defendant's costs.

16 38. Plaintiff provided invaluable assistance to my office and the Class in this case,
17 including providing factual background for the Class Complaint; reviewing the litigation
18 documents; providing information and documents about Defendant's policies and practices;
19 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
20 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
21 benefit. At final approval, Plaintiff submitted a declaration explaining why he believes that the
22 service award should be approved.

23 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE** 24 **REQUESTED FEES AND COSTS**

25 39. As set forth above, I have handled over 250 class and representative actions, have
26 been appointed as class counsel and have successfully resolved over half of those cases, and
27 many others remain pending and will successfully resolve in the future.

28 ///

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

5 41. It is my experience that attorney fee awards of one-third of a common fund
6 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
7 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The
8 fee is further warranted because it is within the range of reasonableness typically awarded in
9 class actions. The costs are reasonably capped at \$20,000 and will be based on the actual amount
10 of costs incurred at the time of final approval.

11 **SETTLEMENT ADMINISTRATOR**

12 42. The parties request that the Court appoint Phoenix Settlement Administrators to
13 serve as the Settlement Administrator. Phoenix is experienced in administering class action
14 settlements, and has provided a proposal to administer this settlement for a total of \$7,060.16.
15 Neither myself nor my firm has a personal or financial interest in the Administrator.

16 **SUBMISSION TO THE LWDA**

17 43. Plaintiff has concurrently submitted the settlement and motion documents to the
18 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
19 as **Exhibit 5**.

20 **EXHIBITS AND CONCLUSION**

21 44. A list of over 130 resolved/settled class actions, collective actions and/or PAGA
22 actions that I've handled in the last 10 years is attached as Exhibit "1." This list excludes
23 currently active (non-settled) cases, as well as cases that I handled prior to 2010.

24 45. The fully signed Settlement Agreement is attached as Exhibit "2." A redline
25 version showing the changes made to the model agreement is attached as Exhibit "3."

26 46. A true and correct copy of the notice letter we submitted to the LWDA is attached
27 as Exhibit "4."

28 ///

47. The LWDA's confirmation of receipt of this Motion, Declarations and exhibits is attached hereto as Exhibit "5."

48. Note: the proposed Class Notice is attached to the Settlement Agreement as Exhibit “A.”

49. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 18, 2022, at Riverside, California.

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

EXHIBIT “1”

Completed Class/Collective/PAGA Cases		
Case Name	Venue	Case Number
Acevedo v. DCH	Los Angeles	JCCP No. 4833
Aguirre v. DirecTV	USDC	2:16-cv-06836
Aguirre v. WellQuest	Los Angeles	19STCV15699
Angulo v. CCX2931, et al.	Los Angeles	BC717320
Antuna v. GATX	San Bernardino	CIVDS1928516
Arevalos v. Americor	Orange	30-2019-01068606
Arroyo v. Hardin Automotive	Orange	30-2013-00648090
Arroyo v. Riverside Auto	Riverside	RIC1200257
Bass v. Southern Refrigerated	San Bernardino	CIVDS1705054
Beard v. Certified Tire	Riverside	RIC1816800
Biggart vs. Creative Comm	San Bernardino	CIVDS1920394
Blanco v. Savage BMW	San Bernardino	CIVRS1200316
Bomar v. Gra-Gar	San Bernardino	CIVDS1618056
Boyd v. May Trucking	USDC	5:17-cv-02166
Bradley v. Amphastar	San Bernardino	CIVDS1607456
Brewer v. Connell Chevrolet	Orange	30-2013-00852123
Carr v. K&B Electric	Riverside	RIC1904970
Carrillo v. Blu-Sky	San Bernardino	CIVSB2105793
Cassidy v. Pep Boys	San Diego	37-2017-00038364
Castelo v. Millemiaaero	San Bernardino	CIVDS1825783
Castner v. Jessup Brothers	Riverside	INC10009311
Castner v. Palm Sprins Motors	Riverside	INC10009313
Castner v. VIP Motor Cars	Riverside	INC1102993
Cedano v. McPeck	Orange	30-2013-00648284
Chang v. FWL	Los Angeles	BC625531
Collado v. Intelligrated Systems	San Bernardino	CIVDS1506443
Constante v. Eddie's Trucking	San Bernardino	CIVDS1902466
Coronado v. Global One	San Bernardino	CIVDS1606686
Cortez v. DMA Enterprises	Ventura	56-2010-00366970
Cosey v. H&IC Bros.	San Bernardino	CIVDS1711425
Cruz v. Sterling	Orange	30-2016-00864990
Cuevas v. Adesa	Riverside	RIC1507066
Cuevas v. FHI	Riverside	RIC1713814
Davila v. Keyes Motors. Inc.	Los Angeles	BC497604
Delara v. Indio Pontiac	Riverside	PSC1301916
DePeralta v. Genesis Healthcare	Los Angeles	BC552963
Diaz v. Legacy Tile	Riverside	CVRI2104520
Elizarraras v. Future Foam	Orange	30-2020-01152286
Estrada v. Eco Shield	San Bernardino	CIVDS1821895
Estrada v. MVT	San Bernardino	CIVDS1620885
Estrada v. Ventura Foods	San Bernardino	CIVDS1903407
Estrada v. Witron	San Bernardino	CIVDS1719080
Evans v. Neovia	San Bernardino	CIVDS1806659
Figuerola v. Mossy Ford	San Diego	37-2014-00028426
Fimbres v. Vons	Riverside	RIC1904892

Finger v. PRH	Riverside	CVRI2101956
Galdamez v. Rush Truck Center	Los Angeles	BC528888
Gallardo v. Tee For 2	San Bernardino	CIVDS1719564
Garcia v. Coach	USDC	5:18-cv-01537
Garcia v. Harkins	USDC	5:18-cv-02314
Garcia v. Macy's	San Bernardino	CIVDS1516007
Gharavi v. Censeo Health	San Bernardino	CIVDS1906608
Gieling v. BSRO Retail Operations	Los Angeles	JCCP 4638
Gomez v. Goldmax	Orange	30-2012-00577321
Guzman v. Deckers	Riverside	CVRI2100707
Haney v. JPI Development	Riverside	RIC537695
Hernandez v. Astro	San Bernardino	CIVDS2011280
Hernandez v. CPS Southwest	Orange	30-2018-00987834
Hernandez v. Cryogenic	San Bernardino	CIVDS1612524
Hernandez v. Jack B. Kelley	San Bernardino	CIVDS1704346
Hernandez v. Walmart	USDC	5:17-cv-01415
Hill v. Amazon	Riverside	RIC1614641
Iversen v. Kelle's	San Diego	37-2016-00013606
Iversen v. Toyota of Orange	Orange	30-2013-00665366
Labra v. Sutter	Los Angeles	20STCV18751
Lara Diaz v. Shamrock	Riverside	RIC2004126
Legorreta v. Paradise	Riverside	RIC1723591
Leon v. Adcomm	San Bernardino	CIVDS1832675
Leon v. Gordon Trucking	San Bernardino	CIVDS1511918
Lepe v. Big Lots	San Bernardino	CIVDS1825693
Libby v. Psycare	San Diego	37-2019-00030656
Lopez Munoz v. Pentair	Ventura	56-2019-00525013
Lopez v. Care Funeral Services	San Bernardino	CIVDS1305650
Lopez v. Heartland	Riverside	RIC1901461
Lopez v. JBGC	San Bernardino	CIVDS2013277
Lopez v. Ramona Tire	Riverside	INC1208982
Lopez v. Unicars, Inc.	ARB	13-5105
Lupercio v. Access Exterminator	San Bernardino	CIVDS1921036
Lynn v. Wild Rocket	ADR	09-6908-
Macias v. Team Nissan	Ventura	56-2013-00431856
Marquez v. SharkNinja	San Bernardino	CIVDS1700491
Martinez v. Baxalta	Los Angeles	BC705969
McCulloch v. The Gill	Los Angeles	BC722742
Medina v. Citistaff Solutions	Riverside	RIC1500664
Mejia v. Mossberg	San Bernardino	CIVDS1724635
Melena v. Andy Frain	Orange	CIVDS1901476
Micheal v. BMW of Riverside	Riverside	RIC1201709
Micheal v. Mercedes Benz	ARB	A196865-27
Mitchell v. American Residential Services	Riverside	RIC1709360
Montano v. Honda Cars of Corona	Riverside	RIC1608165
Moody v. Dura	San Bernardino	CIVDS2008887
Moody v. National Distribution	Riverside	RIC1905953
Moreno v. JJ Kane	Riverside	CVRI2101236

Nelson v. Rancho Santa Margarita Motors	Orange	30-2016-00845005
Ollarsaba v. Pumpman	San Bernardino	CIVDS2008889
Ortiz v. Quick Care	San Bernardino	CIVDS1610143
Palmer vs. Charter Hospice	San Bernardino	CIVDS2013037
Pearson v. PSF Trucking	Kern	BCV-17-102520
Pena v. SA Recycling	Riverside	RIC1610639
Perez v. Staffmark	Riverside	MCC1401137
Pham v. MVVT	Orange	30-2013-00661705
Pollock v. Wynden Stark	Los Angeles	19STCV24217
Pompa v. Landforce	San Bernardino	CIVDS1700451
Pompa v. Russo Brothers	Sacramento	30-2017-00207703
Pompa v. Unicars, Inc.	Riverside	INC1207208
Poulin v. Dignity Health	San Bernardino	CIVDS1515101
Purvis v. Honeywell	Riverside	RIC10010156
Reddall v. Quest Diagnostics	USDC	13-2099
Redman v. Zenith	San Bernardino	CIVDS1826759
Reed v. Beach City	Orange	30-2018-00989665
Reed v. Thousand Oaks Toyota	Ventura	56-2012-00419282
Robertson v. All Care Home Health	Los Angeles	20STCV18318
Romero v. RHI, Inc.	Los Angeles	BC528035
Rossello v. Ontario T	San Bernardino	CIVDS1415708
Ruiz v. Mountain View Tires	San Bernardino	CIVRS1206400
Ruiz v. Unity Courier	Los Angeles	BC724435
Sacks v. Natural Energy	Riverside	RIC1816789
Sandoval v. National Seating	San Bernardino	CIVDS1721797
Santos v. WestRock	San Benito	CU-18-00074
Sebastian v. Sprint	USDC	8:18-cv-00757
Sewell v. Imedris Data Corp	San Bernardino	CIVDS1401836
Solis v. Palo Verde Health Care	Riverside	INC10009315
St. Amand v. Hendrickson	San Bernardino	CIVDS1617165
Stafford v. GOSCH Auto	Riverside	RIC1814300
Stinson v. Pacific Production Plumbing	San Bernardino	CIVDS1721708
Stock v. Atwood & Andrews, Inc.	Riverside	MCC1400665
Torres v. ePac	San Bernardino	CIVDS2017140
Torres v. Xerxes	Orange	30-2019-01095537
Vaughner v. FST Services	San Bernardino	CIVDS1830784
Venegas v. Ross Nissan	Los Angeles	BC694099
White v. Westin	Riverside	PSC1404641
Williamson v. APEX	San Bernardino	CIVDS2000708
Woods vs. Just In Time Cargo	San Bernardino	CIVDS2000750
Wright v. Bob Stall Chevrolet	San Diego	37-2017-00010598

EXHIBIT “2”

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.

///

///

///

///

///

[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.
---	---

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 “3”

~~[MODEL] CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE~~

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Jimmy Maciel ("Plaintiff") and defendant XYZ

Shambaugh & Son, L.P. ("Defendant"), Plaintiff and XYZ 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 XYZ 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.

~~1.4.1.5. "Aggrieved Employee" means [e.g., a person employed all current and former non-exempt/hourly employees of Defendant, who are not represented by XYZ in California and classified as a any union (i.e., non-union employees) and who worked for XYZ Defendant in California at any time during the PAGA Period].~~

~~1.5.1.6. "Class" means [define class e.g., all persons employed "Class" consists of all current and former non-exempt/hourly employees of Defendant, who are not represented by XYZ in California and classified as any union (i.e., non-union employees) and who worked for XYZ Defendant in California at any time during the Class Period].~~

~~1.6.1.7. "Class Counsel" means [Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP]~~

~~1.7.1.8. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and~~

Formatted: Header

Formatted

... [1]

Formatted

... [2]

Formatted: Centered, Indent: Left: 0", First line: 0", Right: -0.02"

Formatted

... [3]

Formatted

... [4]

Formatted: Indent: First line: 0.5", Right: 0.49", Space Before: 14.5 pt, Tab stops: 3.59", Left + Not at 2.42"

Formatted

... [5]

Formatted: Not Expanded by / Condensed by

Formatted: Font: 12 pt

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 0.63"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 0.63"

Formatted

... [6]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [7]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: List Paragraph, Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [8]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 0.63"

Formatted

... [9]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 0.63"

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [10]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 0.63"

expenses, respectively, incurred to prosecute the Action.

1.8.1.9. “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 XYZ’s Defendant’s possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of hours worked during the Class Period Workweeks, and PAGA number of Pay Periods Worked during the PAGA Period.

1.9.1.10. “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).

1.10. —“Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

Formatted: Header

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [11]

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted

... [12]

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

1.11. 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.

1.11. —“Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, court approved notice of class action settlement to be

1.12. mailed to Class Members in English [with a Spanish translation, if applicable] only, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

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

1.13.1.14. “Class Representative” means the named and “Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative” each mean Jimmy Maciel.

1.14.1.15. “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.

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

1.16.1.18. “XYZ” means named Defendant Shambaugh & Son, L.P.

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

1.18. “Effective Date” means the date by when both of the following have occurred:

1.20. (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.

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

Formatted: Header

Formatted

Formatted: List Paragraph, Left, Indent: Left: 0", First line: 0.5", Right: 0.39", Space Before: 0 pt, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.63", Tab stops: 1", Left + 1.08", Left + 1.08", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

Formatted

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.21", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.63", Tab stops: 1", Left + 1.08", Left + 1.08", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

Formatted

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

Formatted

Formatted: List Paragraph

Formatted

Formatted

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

Formatted: Not Expanded by / Condensed by

Formatted: Tab stops: 1", Left

Formatted

Formatted

Formatted

Formatted: List Paragraph

Formatted

Formatted

Formatted: Header

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [29]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [30]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [31]

~~1.20.1.23.~~ "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

~~1.21.1.24.~~ "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

~~1.22.~~ "Gross Settlement Amount" or "GSA" means \$~~450,000~~, which is the total amount ~~XYZDefendant~~ 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

Formatted: Header

1.25. PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

Formatted ... [33]

Formatted ... [32]

1.23.1.26. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweekshours worked during the Class Period.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [34]

Formatted ... [35]

1.24.1.27. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks workedPay Periods Worked during the PAGA Period.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [37]

Formatted ... [36]

1.25.1.28. "Judgment" means the judgment entered by the Court based upon the Final Approval.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [39]

Formatted ... [38]

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

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [41]

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

Formatted ... [40]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

1.28.1.31. "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.

Formatted ... [42]

Formatted ... [43]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [45]

Formatted ... [44]

1.29.1.32. "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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [47]

Formatted ... [46]

1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for XYZ for at least one day during the PAGA Period.

Formatted ... [48]

1.31.1.33. "PAGA Period" means the period from August 18, 2020, to November 30, 2022.

Formatted ... [49]

1.32.1.34. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [51]

Formatted ... [50]

1.33.1.35. "PAGA Notice" means Plaintiff's August 18, 2021, letter to XYZDefendant and the LWDA {and Plaintiff's letter to XYZ and the LWDA} providing notice pursuant to Labor Code section 2699.3, subd.(a).

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [53]

Formatted ... [52]

1.34.1.36. "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 EmployeesEmployee (\$10,000) and the 75% to LWDA (\$30,000) in settlement of PAGA claims.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [55]

Formatted ... [54]

() and the 75% to LWDA () in settlement of PAGA claims.

Formatted: Header

~~1.35-1.37.~~ “Participating Class Member” means ~~all Settlement Class Member~~Members except for those who does not submit a valid and opt-out by submitting a timely valid Request for Exclusion ~~from the Settlement~~.

Formatted

... [56]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.36.~~ “Plaintiff” means _____, the named plaintiff in the Action.

~~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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [57]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.37-1.39.~~ “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

~~1.38-1.40.~~ “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

Formatted

... [58]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.39-1.41.~~ “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [59]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.40-1.42.~~ “Released PAGA Claims” means the claims being released as described in Paragraph 6.23 below.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [60]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.41-1.43.~~ “Released Parties” means: ~~XYZ~~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.)~~.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.42-1.44.~~ “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.

Formatted

... [61]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [62]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.43-1.45.~~ “Response Deadline” means ~~[e.g., 60]~~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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.44-1.46.~~ “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

Formatted

... [63]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [64]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

~~1.45.~~ “Workweek” means any week during which a Class Member worked for XYZ for at least one day, during the Class Period.^{iv}

~~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)

Formatted: Font: 12 pt

Formatted: List Paragraph, Space Before: 0 pt

Formatted: Header

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.

Formatted: Not Expanded by / Condensed by

2.1. On August 19, 2021, Plaintiff commenced this Action by filing a Complaintcomplaint alleging class action causes of action against XYZ for [The Complaint is the operative complaint in the Action (the "Operative Complaint.")]-[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 [e.g., First Amended Complaint] alleging causes of action against XYZ for The [e.g., First Amended] Complaint is the operativefirst amended complaint inthat added the ActionPAGA claims (the "Operative

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Header

Formatted

... [65]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.09", Space Before: 0 pt, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.63", Tab stops: 1", Left + 2.1", Left + 2.49", Left + 5.9", Left + 6.53", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [66]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted

... [67]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Space Before: 0.3 pt, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.63", Tab stops: 1", Left + 2.13", Left + 2.49", Left + 3.33", Left + 5.7", Left + 6.55", Left

Formatted: Font: Times New Roman

Formatted: Normal, Right: 0.19", Tab stops: 1", Left + 2.13", Left + 2.49", Left + 3.33", Left + 5.7", Left + 5.78", Left + 6.55", Left

Formatted

... [68]

Formatted

... [69]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [70]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted

... [71]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted

... [72]

2.1. ~~operative first amended complaint shall be referred to as the "Complaint.")~~
~~XYZ"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply~~
~~with the laws identified in in the Operative 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 XYZ Defendant and the LWDA by sending the PAGA Notice.

2.3. On (type in additional dates), [August 30,
2022], the Parties

2.3. participated in an all-day mediation presided over by which led
to Jeff Ross, which culminated in a mediator's proposal. The Parties accepted the proposal and
thereafter entered into this Agreement to settle the Action (describe alternative means of
negotiation).

(describe alternative means of negotiation)

2.4. Prior to ~~the~~ mediation ~~and~~ negotiating the Settlement, Plaintiff obtained,
through

2.4. ~~formal and informal discovery, (documents, testimony and information~~
~~obtained), 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~~ ~~has not~~ granted class certification.
(insert details as needed)

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, XYZ promises 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. XYZ, 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

Formatted: Header

XYZDefendant.

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

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Header

Formatted

... [73]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.07" + Indent at: 0.93", Tab stops: 1", Left + 1.58", Left + 1.58", Left + 4.36", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [74]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [75]

Formatted

... [76]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0", Space Before: 0.05 pt, Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.07" + Indent at: 0.93", Tab stops: 1", Left + 1.58", Left + 1.58", Left + Not at 2.18" + 3.42"

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [77]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [78]

Formatted

... [79]

3.2.1. entitled to receive as a Participating Class Member. XYZ 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. XYZ Defendant will not oppose requests for these payments provided that 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 XYZ Defendant harmless, and indemnifies XYZ 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 Workweeks worked Pay Periods Worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Pay Periods 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 % The remaining ninety percent (90%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for, e.g., interest (10%) and penalties (80%) (the

Formatted: Header

3.2.4.1. "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.

Formatted

... [80]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.3", Space Before: 0 pt, Outline numbered + Level: 4 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.03" + Indent at: 1.28", Tab stops: 1", Left + 2.05", Left + 2.08", Left + 2.08", Left + 5.93", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [81]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [82]

Formatted

... [83]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.07" + Indent at: 0.93", Tab stops: 1", Left + 1.58", Left + 1.58", Left + 2.36", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [84]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted

... [85]

Formatted

... [86]

Formatted: Font: 12 pt, Not Bold

Formatted: Heading 1, Indent: Left: 0.33", Space Before: 0.05 pt, Tab stops: 0.33", Left

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%

3.2.5. (\$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 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period 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. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZ estimates there are Class Members who collectively worked a total of Workweeks, and of Aggrieved Employees who worked a total of PAGA Pay Periods.

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

4.2. Class Data. Not later than [e.g., 15]ten (10) business days after the Court grants Preliminary Approval of the Settlement, XYZDefendant will simultaneously 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. XYZDefendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class memberClass Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline, by which XYZDefendant must send the Class Data

Formatted

... [87]

Formatted: Header

4.2. 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.

Formatted

... [88]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.63", Tab stops: 1", Left

4.3. Funding of Gross Settlement Amount. XYZ Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay XYZ's Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than [14]ten (10) business days after the Effective Date.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [89]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

4.4. Payments from the Gross Settlement Amount. Within [14]ten 10 business days after XYZ 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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [90]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

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 (not less than 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 including Non-. If the recipient is both a Participating Class Members who qualify as Member and Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator, the Payments may send Participating Class Members a single be contained on one check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted

... [91]

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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted

... [92]

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).

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Right: 0.09", Space Before: 3.95 pt, Tab stops: 1", Left + 3.74", Left

Formatted

... [93]

~~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).] [or to a Court approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") _____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.~~

Formatted: Header

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZDefendant 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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted ... [94]

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

Formatted: Indent: Left: 0", First line: 0.13", Tab stops: 0.5", Left + Not at 0.42" + 0.42"

Formatted ... [95]

6.1 ~~_____~~ Plaintiff's Release. Plaintiff and his ~~or her respective~~ former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge the Released Parties from all claims, ~~transactions, or occurrences [that occurred during the Class Period], including, but not limited to: (a) and causes of action in the Action, and all claims and causes of action that were, or reasonably could have been, alleged, pleaded based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained~~factual allegations in the Operative Complaint, Plaintiff's PAGA Notice, [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of themAction.

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted ... [96]

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:

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted ... [97]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: All caps

Formatted: Indent: Left: 1", Right: 1.17", Tab stops: 1", Left

Formatted ... [98]

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 Who Are Not Aggrieved Employees: 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 (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay for overtime; minimum wages; meal period premiums; rest break premiums; vested vacation; wage; etc.]. Except as set forth in Section 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 of this Agreement, 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 Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are 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 PAGA Period facts stated in the Operative Complaint [and] the PAGA Notice [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. 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 XYZ’s Defendant’s Declaration in Support of Preliminary Approval. Within 15 days of the full execution of this Agreement, XYZ Defendant will prepare and deliver to Class Counsel a signed Declaration from XYZ Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and XYZ Defendant shall advised that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

Formatted	... [99]
Formatted	... [100]
Formatted	... [101]
Formatted	... [102]
Formatted	... [103]
Formatted	... [104]
Formatted	... [105]
Formatted	... [106]
Formatted	... [107]
Formatted	... [108]
Formatted	... [109]
Formatted	... [110]
Formatted	... [111]
Formatted	... [112]
Formatted	... [113]
Formatted	... [114]
Formatted	... [115]
Formatted	... [116]
Formatted	... [118]
Formatted	... [117]
Formatted	... [119]
Formatted	... [120]
Formatted	... [121]
Formatted	... [122]
Formatted	... [123]
Formatted	... [124]
Formatted	... [125]
Formatted	... [126]
Formatted	... [127]
Formatted	... [128]
Formatted	... [129]
Formatted	... [130]
Formatted	... [131]
Formatted	... [132]
Formatted	... [133]
Formatted	... [134]
Formatted	... [135]
Formatted	... [136]
Formatted	... [137]
Formatted	... [138]
Formatted	... [139]

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 draft proposed Class Notice; (iv) 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/or the proposed Cy Pres]; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Header

Formatted

... [140]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.12" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [141]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted

... [142]

Formatted: Not Expanded by / Condensed by

Formatted: Font: 12 pt

Formatted

... [143]

Formatted

... [144]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.12" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [145]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

7.2 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 and/or the proposed Cy-Pres; (v) a signed declaration from each Class Counsel firm 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 (Labor Code section 2699.3, subd. (a)), Operative, operative, Complaint (Labor Code section 2699, subd. (1)(1)), and this Agreement (Labor Code section 2699, subd. (1)(2)); (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 and/or the Cy-Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration 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 8.1 to serve as 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.

Formatted: Header

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.

Formatted ... [146]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

8.4 Notice to Class Members.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [147]

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, PAGA Members, Workweeks, Aggrieved Employees, hours worked in the Class Period and Pay Periods Worked in the PAGA Period, in the Class Data.

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

8.4.2 Using best efforts to perform as soon as possible, and in no event later than [14]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 [with Spanish translation, if applicable] 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 Workweekshours worked during the Class Period and PAGA 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.

Formatted ... [148]

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted ... [149]

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.

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted ... [150]

8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods Worked, and Requests for Exclusion will be extended an additional [14] calendar days beyond the [60] daysResponse 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.

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted ... [151]

8.4.5 If the Administrator, XYZ or 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

Formatted: Font: 12 pt

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted ... [152]

Formatted: Header

8.4.5 receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

Formatted

... [153]

Formatted: List Paragraph, Indent: Left: 0", First line: 1", Right: 0.09", Space Before: 0 pt, Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.07" + Indent at: 0.93", Tab stops: 1", Left + 1.58", Left + 1.58", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [154]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted

... [155]

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted

... [156]

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 [60] days after the Administrator mails the Class Notice 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.

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted

... [157]

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 8.5.3 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

Formatted

... [158]

Formatted: List Paragraph, Indent: Left: 0", First line: 1", Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.07" + Indent at: 0.93", Tab stops: 1", Left + 1.58", Left + 1.58", Left

Formatted: Font: 12 pt

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted

... [159]

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.

6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks-Hours Worked During Class Period Or Pay Periods Worked During PAGA Period. Each Class Member shall have [60] days after until the Administrator mails the Class Notice Response Deadline (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) Worked that were allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the

Formatted

... [160]

Formatted: Header

Formatted

... [161]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.2", Space Before: 0 pt, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.12" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [162]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted

... [163]

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted

... [164]

Formatted: Indent: First line: 1", Tab stops: 1", Left

Formatted

... [165]

Formatted: Indent: Left: 0", First line: 1", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted

... [166]

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [167]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [168]

8.6 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 Workweek 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 Workweek hours worked during the Class Period and/or 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 Workweek hours worked during the Class Period and/or 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 [60] days after the Administrator's mailing of the Class Notice 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

Formatted: Header

Formatted

... [169]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.15", Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.07" + Indent at: 0.93", Tab stops: 1", Left + 1.58", Left + 1.58", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [170]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [171]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Formatted

... [172]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [173]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

8.8.2 validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list 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- (Exclusion List); (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 Workweeks and/or 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 Workweek and/or 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 Workweekshours worked and or 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 attach the Exclusion List 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.

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.13", Tab stops: 0.5", Left + Not at 0.42" + 0.42"

9. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records, XYZ estimates Defendant represents that, as of the date execution of this Settlement Agreement, (1) there are approximately 97 individuals in the Settlement Class Members and Total Workweeks who, collectively, worked approximately 295,224 hours during the Class period and (2) Period. Defendant further represents that there were are 64 Aggrieved Employees who, collectively, worked Pay Periods approximately 2,543 pay periods during the PAGA Period.ⁱⁱⁱ 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).

Formatted

... [174]

10. **XYZ'S 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, XYZ Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZ 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, XYZ Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZ Defendant must notify Class Counsel and the Court of its election to withdraw not later than ~~seven~~ 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

Formatted

... [175]

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 ~~seven~~ 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.

Formatted

... [176]

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 ~~five~~ 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

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

Formatted

... [177]

Formatted: Header

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.

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

~~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

Formatted: Header

11.3 settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

Formatted

... [178]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.21", Space Before: 0 pt, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.12" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [179]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [180]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

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 and a proposed amended judgment.

Formatted

... [181]

Formatted: Indent: Left: 0", First line: 0.13", Tab stops: 0.5", Left + Not at 0.42"

13. ADDITIONAL PROVISIONS.

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Hanging: 0.29"

Formatted: Font: 12 pt

Formatted

... [182]

~~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 XYZDefendant that any of the allegations in the ~~Operative~~operative Complaint have merit or that XYZDefendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that XYZ'sDefendant'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, XYZDefendant reserves the right to contest certification of any class for any reasons, and XYZDefendant 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 XYZ'sDefendant's defenses. The Settlement, this Agreement and Parties'Parties' willingness to

Formatted: Header

13.1 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).

Formatted

... [183]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.12" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted

... [184]

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, XYZDefendant 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.

Formatted

... [185]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, XYZDefendant 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, any 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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Not Expanded by / Condensed by

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.

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted

... [186]

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.

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [187]

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and XYZDefendant, 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

Formatted: Header

13.6 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.

Formatted

... [188]

Formatted: List Paragraph, Indent: Left: 0", First line: 0.5", Right: 0.09", Space Before: 0 pt, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: -0.12" + Indent at: 0.63", Tab stops: 1", Left

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [189]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [190]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [191]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [192]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [193]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [194]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted

... [195]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

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 and 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, XYZ 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 XYZ 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 XYZ Defendant unless, prior to the Court's discharge of the Administrator's obligation, XYZ Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

Formatted: Header

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.

Formatted ... [196]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [197]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted ... [198]

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", Tab stops: 1", Left

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

13.16 Calendar Days. Unless otherwise noted, all ~~reference~~ 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 XYZ Defendant:

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

Formatted ... [199]

Formatted: Indent: Left: 0", Space Before: 0 pt, Tab stops: 1", Left

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.

Formatted: Font: 12 pt

Formatted: Tab stops: 1", Left

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

Formatted ... [200]

Formatted: Indent: First line: 0.5", Tab stops: 1", Left

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.5", Tab stops: 1", Left + Not at 1.08" + 1.08"

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the

Formatted: Header

litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree ~~that~~, upon the signing of this Agreement ~~that~~ 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.

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 12 pt

For: //

///

///

///

///

[Signatures on following page]

Dated: November __, 2022 **PLAINTIFF AND CLASS REPRESENTATIVE:**

Jimmy Maciel

Dated: November __, 2022 **CLASS COUNSEL:**
LAUBY MANKIN LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff _____ For XYZ

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Indent: Left: 0", Space Before: 0 pt, Tab stops: Not at 2.62" + 3.71" + 5.9"

Formatted: Normal

Dated: November __, 2022 **DEFENDANT:**
SHAMBAUGH & SON, L.P.

William J. Meyer
Sr. Vice President & General Counsel For Plaintiff _____
Counsel For XYZ

Formatted: Font: 12 pt, Character scale: 105%

Formatted: Indent: Left: 2.5", Space Before: 0 pt, Tab stops: Not at 2.15" + 3.68" + 5.55"

Formatted: Font: 12 pt, Character scale: 105%

Formatted: Header

Dated: November __, 2022

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

Joshua D. Kienitz
Attorneys for Defendant

END OF DOCUMENT

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

Exhibit “A”

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

AND HEARING DATE FOR FINAL COURT APPROVAL

Maciel, et. al. v. _____ (case name and number)

Shambaugh & Son, L.P.

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

Formatted

... [201]

Formatted: Font: 11 pt

Formatted: Font: 12 pt, Bold

Formatted: Font: Times New Roman, 12 pt

***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.***

Formatted

... [202]

Formatted

... [203]

You may be eligible to receive money from an employee class action lawsuit ("Action") against _____ (abbreviate name; "XYZ" is used herein as a placeholder) Shambaugh & Son, L.P. ("Defendant" or "Shambaugh") for alleged wage and hour violations. The Action was filed by a [n] Jimmy Maciel a former XYZ Shambaugh employee _____ ("Plaintiff") and seeks payment of (1) ~~backunpaid~~ wages, ~~statutory damages, interest and other relief for attorneys' fees on behalf of~~ a class of ~~[e.g., 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") who worked for XYZ during the Class Period (____ August 19, 2017 to ____ November 30, 2022); and (2) penalties under the California Private Attorney General Act ("PAGA") for all ~~[e.g., non-exempt/hourly]~~ employees employees of Shambaugh, who are not represented by any union (i.e., non-union employees) and who worked for XYZ in California during the PAGA Period (____ August 18, 2020 to ____ November 30, 2022) ("Aggrieved Employees").

Formatted

... [204]

Formatted

... [205]

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

Formatted

... [206]

Formatted: Indent: Left: 0.08", First line: 0.5", Right: 0.13"

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

<u>Two Parts</u>	<u>Hours Worked During Class Period (Class Member); Pay Periods Worked During PAGA Period (Aggrieved Employee)</u>	<u>Your Estimated Share</u>
<u>Class Member</u>	<u>INSERT</u> (During Class Period)	<u>INSERT</u> (Individual Class Payment)
<u>Aggrieved Employee</u>	<u>INSERT</u> (During PAGA Period)	<u>INSERT</u> (Individual PAGA Payment)

Based on XYZ's Defendant's records, and the Parties' current assumptions, your Individual Class Payment ~~is estimated to be \$ _____~~ (less, withholding) and your Individual PAGA Payment ~~is estimated to be \$ _____~~ are shown in the chart above, along with the hours and pay

Formatted

... [207]

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

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 XYZ's Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

Formatted

... [208]

The above estimates are based on XYZ's records showing that you worked _____ workweeks during the Class Period and you worked _____ workweeks during the PAGA Period. If you believe that you worked more workweeks Pay Periods during either period than Defendant's records show, you can submit a challenge by the deadline date DATE, 2023 ("Response Deadline"). See Section 4 of this Notice.

Formatted: Font: 12 pt

Formatted: Normal, Indent: Left: 0", Right: 0", Tab stops: Not at 4.19" + 6.18"

Formatted

... [209]

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 XYZ Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against XYZ Defendant.

Formatted: Normal

Formatted

... [210]

If you worked for XYZ Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

Formatted

... [211]

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

(1) **Do Nothing.** You don't have to do anything to participate as shown in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against XYZ. Chart below:

(2) **Opt Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XYZ, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt out of the PAGA portion of the proposed Settlement.

XYZ will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
You Don't Have to Do Anything to NOTHING & PARTICIPATE IN THE SETTLEMENT	If you do nothing, 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 a Participating Class Member, eligible for an Individual Class Payment bound by the terms of the Settlement Agreement and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against XYZ that are covered by this Settlement (sue on the Released Class Claims) described below.
You Can Opt out of the Class Settlement but not the PAGA Settlement	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. Once excluded If you opt-out, you will no longer be a Non-Participating Class Member, and no longer eligible for you will (1) not receive an Individual Class Payment. Non-Participating, but you will preserve your right to pursue the Released Class Members cannot object to any portion Claims described below subject to applicable statutes of the proposed Settlement. See Section 6 of this Notice limitations, and (2) be barred from filing an objection to the settlement.
The Opt-out OPT-OUT (EXCLUDE YOURSELF)	You cannot opt-out of the PAGA portion of the proposed Settlement. XYZ Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims (defined below). See Section 6 of this Notice.
DEADLINE is —: 2023	
Participating Class Members Can Object to the Class	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

Formatted: Header

Formatted

... [212]

Formatted: Body Text, Indent: Left: 0.08", First line: 0.5", Right: 0.13", Space Before: 0.05 pt, No bullets or numbering, Tab stops: Not at 0.83"

Formatted: Font: 9 pt

Formatted: Normal, Justified, Right: 0.02", Space Before: 0 pt, After: 12 pt

Formatted: Font: 11 pt

Formatted: Normal, Justified, Indent: Left: 0", Right: 0.02", Space Before: 3 pt, After: 3 pt, Line spacing: single

Formatted: Normal, Right: 0.02", Space Before: 3 pt, After: 3 pt

Formatted Table

Formatted

... [214]

Formatted

... [213]

Formatted

... [215]

Formatted: Font: 11 pt

Formatted

... [216]

Formatted: Normal, Justified, Indent: Left: 0", Right: 0.02", Space Before: 3 pt, After: 3 pt, Line spacing: single

Formatted: Font: 11 pt, Small caps

Formatted: Normal, Right: 0.02", Space Before: 3 pt, After: 3 pt, Tab stops: Not at 1.39"

Formatted: Font: 11 pt, Small caps

Formatted: Font: 11 pt

Formatted

... [217]

Formatted: Normal, Justified, Indent: Left: 0", Right: 0.02", Space Before: 3 pt, After: 3 pt, Line spacing: single

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Settlement but not the PAGA Settlement Written Objections Must be Submitted by OBJECT DEADLINE: [REDACTED], 2023	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 WORKED DEADLINE: [REDACTED], 2023	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 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.

Formatted: Header

Formatted

... [218]

Formatted: Normal, Right: 0.02", Space Before: 3 pt, After: 3 pt

Formatted: Font: 11 pt, Small caps

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

You Can Participate in the Final Approval Hearing	The Court's YOU MAY ATTEND THE FINAL APPROVAL HEARING is scheduled [REDACTED], BUT IT'S NOT REQUIRED. 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.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by DATE: [REDACTED], 2023 TIME: [REDACTED] 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. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to XYZ's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.

Deleted Cells

Formatted

... [219]

Formatted Table

Formatted

... [220]

Formatted: Normal, Centered, Indent: Left: 0", Right: 0.02", Space Before: 3 pt, After: 3 pt, Line spacing: single, Tab stops: Not at 1.24"

Formatted

... [221]

Formatted: Normal, Justified, Indent: Left: 0", Right: 0.02", Space Before: 3 pt, After: 3 pt, Line spacing: single, Tab stops: Not at 3.58"

Formatted: Font: 11 pt, Small caps

Formatted: Normal, Right: 0.02", Space Before: 3 pt, After: 3 pt

Formatted: Font: 12 pt

Formatted: Space Before: 0.3 pt

Formatted: Not Expanded by / Condensed by

Formatted: Indent: First line: 0.42"

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

1. WHAT IS THE ACTION ABOUT?

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a [REDACTED] former XYZ Shambaugh employee. The Action accuses XYZ Defendant of violating California labor laws by failing to pay [e.g., overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and reimbursable expenses], and

Formatted: Header

failing to provide [e.g., 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"). Plaintiff is represented by attorneys in the Action:

____ ("Class Counsel.")

Formatted

... [222]

XYZ

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

Formatted

... [223]

Formatted: Indent: First line: 0.42"

Formatted: Indent: Left: 0.08", First line: 0.42", Right: 0.14"

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

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 XYZDefendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and XYZDefendant hired [] an experienced, neutral mediator [] a retired judge

Formatted

... [224]

[] (describe alternative means of negotiation) in an effort to resolve the Action by negotiating an 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 XYZDefendant 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, XYZDefendant does not admit any violations or concede the merit of any claims.

Formatted: Indent: Left: 0.08", First line: 0.42", Right: 0.11", Line spacing: Multiple 1.01 li, Tab stops: Not at 1.97" + 6.55"

Formatted

... [225]

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) XYZDefendant 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?

XYZ

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

1. Defendant Will Pay \$ —450,000 as the Gross Settlement Amount (Gross Settlement). XYZDefendant 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, XYZDefendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomebecomes 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 AwardService Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative AwardService 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

Formatted: Header

Formatted: Indent: First line: 0.42"

Formatted

... [226]

Formatted

... [227]

Formatted

... [228]

Formatted

... [229]

Formatted

... [230]

Formatted

... [231]

Formatted: Font: 12 pt

Formatted

... [232]

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Aggrieved Employees based on their PAGA Periodshare 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

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

3. Settlement (the “Net Settlement”), by making Individual Class Payments to Participating Class Members based on their hours worked during the Class Period ~~Workweeks~~.

4. Taxes Owed on Payments to Class Members. Plaintiff and XYZDefendant are asking the Court to approve an allocation of % 10% of each Individual Class Payment to taxable wages (“Wage Portion”) and % 90% to ~~[e.g., penalties and interest, etc.]~~ (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ~~[Option 1: (XYZDefendant 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 XYZDefendant 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.

~~☐ will be deposited with the California Controller’s Unclaimed Property Fund in your name.~~
~~☐ will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).~~

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 XYZDefendant.

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

Formatted: Header

Formatted

... [233]

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.58", Tab stops: 0.58", Left

Formatted

... [234]

Formatted

... [235]

Formatted

... [236]

Formatted

... [237]

Formatted

... [238]

Formatted: Font: 12 pt

Formatted: List Paragraph, Indent: Left: 0.58", Right: 0.17", Space Before: 0 pt, Tab stops: 0.58", Left

Formatted

... [239]

Formatted

... [240]

Formatted

... [241]

Formatted: Indent: First line: 0"

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

claims against [XYZDefendant](#) based on the PAGA Period facts alleged in the Action.

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

7. The Proposed Settlement Will be Void ~~ifl~~ 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. ~~Plaintiffs~~ Plaintiff and XYZDefendant have agreed that, in either case, the Settlement will be void; XYZDefendant will not pay any money and Class Members will not release any claims against XYZDefendant.

Formatted: Header

Formatted

... [242]

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 ~~Workweek~~ 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.

Formatted

... [243]

Formatted

... [244]

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.33" + Indent at: 0.58", Tab stops: 0.58", Left

9. Participating Class Members’ Release. After the Judgment is final and XYZDefendant has fully funded the Gross Settlement ~~[Option 1: (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 XYZDefendant or related entities for wages based on the ~~Class Period~~ facts and PAGA penalties based on PAGA Period facts, as alleged in the Action ~~and for the duration of the Class Period and PAGA Period, which are~~ resolved by this Settlement.

Formatted

... [245]

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

Formatted

... [246]

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 ~~(i)~~ all claims that were alleged, or reasonably could have been alleged, based on the ~~Class Period~~ facts stated in the Operative Complaint ~~[and ascertained in the course of the Action]~~ ~~[including, e.g., “(a) any and all claims involving any alleged failure to pay, including claims for overtime; minimum wages; meal period premiums; rest break premiums; vested vacation; wage; etc.”]~~. Except as set forth in Section ~~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 ~~of~~, 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 Settlement Agreement, “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,

Formatted

... [247]

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

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 XYZDefendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against XYZDefendant, 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 XYZDefendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", Right: 0", Space Before: 0.05 pt

Formatted: Not Expanded by / Condensed by

Formatted: Right: 0.49", Space Before: 3.75 pt

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 11 pt

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

Formatted

... [248]

Formatted: List Paragraph, Indent: Hanging: 0.58", Tab stops: 0.58", Left

Formatted: Justified, Indent: Left: 1", Right: 0.67"

All Participating and Non-Participating Class Members who are 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 PAGA Period—facts stated in the Operative Complaint[,] and the PAGA Notice [and ascertained in the course of the Action], including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.] 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.

Formatted

... [249]

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

Formatted: Right: 0.11", Space Before: 0 pt

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 Workweekshours worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Workweekshours 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 PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee during the PAGA Period.
3. Workweek/Hours Worked and Pay Period Challenges. The number of Class-Workweekshours you worked during the Class Period, and the number of PAGA Pay-Periodspay periods you worked during the PAGA Period, as recorded in XYZ's Defendant's records, are stated in the first page of this Notice. You have until _____ ("Response Deadline") to challenge the number of Workweeks and/hours or Pay-Periodspay 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

Formatted

... [250]

Formatted

... [251]

Formatted

... [252]

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

the Administrator’s contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept XYZ’s Defendant’s calculation of Workweek hours and/or Pay Periods pay periods based on XYZ’s 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 Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ’s 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?

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

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) including those who also qualify as and Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The 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 (i.e., every Non-Participating Class Member).

Formatted

... [253]

Formatted

... [254]

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.

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.5"

Formatted

... [255]

Formatted: Space Before: 0.3 pt

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

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 _____

Formatted: Space Before: 0.3 pt

Formatted: Indent: Left: 0", First line: 0.5"

Formatted

... [256]

_____ *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. The Administrator must be sent 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?

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 XYZ 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 Award 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

Formatted

... [257]

Formatted: Indent: Left: 0", First line: 0.5"

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Font: 12 pt
Formatted: Indent: First line: 0.5", Right: 0.1", Space Before: 0 pt, Tab stops: 1.97", Left + 4.23", Left

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

cost to you. You can also view them on the Administrator's Website [INSERT URL](#) or the Court's website [INSERT URL](#).
_____(url)_____, or the Court's website _____(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 Award 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,

Formatted: Header

telephone number, and approximate dates of employment for [XYZ]Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Formatted

... [258]

Formatted: Indent: Left: 0", First line: 0.5", Right: 0.1", Space Before: 0 pt, Tab stops: 1.97", Left + 4.23", Left

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.

Formatted

... [259]

Formatted: Font: Bold

Formatted: Space Before: 0.3 pt

8. CAN I ATTEND 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 _____ (time) INSERT TIME in Department _____ 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/>; <https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

Formatted: Indent: Left: 0", First line: 0.5"

Formatted

... [260]

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.

Formatted: Font: 12 pt

Formatted: Indent: First line: 0.5", Right: 0.2", Space Before: 0.05 pt, Tab stops: 5.65", Left

Formatted

... [261]

9. HOW CAN I GET MORE INFORMATION?

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything XYZDefendant 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 _____ (url) 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>) <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.

Formatted

... [262]

Formatted: Font: 12 pt

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

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

The contact
information for
Class Counsel:-
Name of Attorney:-
Email Address:-
Name of Firm:-
Mailing Address:-
Telephone:-

and the Settlement Administrator: ~~Name of Company~~ are below:

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: No underline

Formatted: Font: 12 pt, No underline

Formatted: Font: 12 pt, No underline, Not Expanded by / Condensed by

Formatted: Font: 12 pt, No underline

Formatted: Font: 12 pt

Formatted: Normal, Justified, Indent: Left: 0", Right:

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

Class Counsel:

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

Settlement Administrator:

[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.

☐ you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds

☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

11. WHAT IF I CHANGE MY ADDRESS?

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0", First line: 0.5"

Formatted: Not Expanded by / Condensed by

Formatted: Indent: Left: 0.08", Right: 0.09"

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

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

ⁱ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex-litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱ Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱⁱ See endnote ii above.

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)

^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed-upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.

^{viii} Releases in Notice should track the releases in the Settlement Agreement.

Formatted: Header

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Not Expanded by / Condensed by

Formatted: Font: 12 pt, Bold

Formatted: Font: 12 pt

Formatted: Font: 10 pt

Formatted: Body Text, Line spacing: Multiple 0.06 li

EXHIBIT “4”



August 18, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Shambaugh & Son, LP
7614 Opportunity Drive
Fort Wayne, IN 46825

Shambaugh & Son, LP
3233 Enterprise Street
Brea, CA 92821

Re: PAGA Civil Penalty Claim
Jimmy Maciel v. Shambaugh & Son, L.P.

To the Labor and Workforce Development Agency and Shambaugh & Sons, L.P.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Jimmy Maciel (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Shambaugh & Sons, L.P. and/or any affiliated entities, as well as its owners (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2018 through August 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one such example, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant. In other words, the Company’s rounding policy is not neutral and results in systematic undercompensation for the Aggrieved Employees.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable

to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break. Additionally, the Company failed to maintain any mechanism for the payment of rest period premium payments as required by Labor Code § 226.7.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, the Company failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As one such violation, the Company utilized a "use it or lose it" policy whereby it forced Aggrieved Employees to forfeit accrued but unused vacation hours. For example, at the conclusion of 2020, Claimant had 3 unused vacation hours, as reflected on his paystub dated December 29, 2020. Yet, despite not using these vacation hours, Claimant's first paystub of 2021 (dated January 5, 2021) shows that he only had 1.5 vacation hours. And the same paystub confirms that those 1.5 hours were accrued in that pay period, meaning that he started the pay period with zero hours, and that the Company illegally caused Claimant to forfeit 3 earned vacation hours. See *Boothby v. Atlas Mechanical* (1992) 6 Cal.App.4th 1595, 1601 (any forfeiture of an employee's vested vacation time is prohibited); *Suastez v. Plastic Dress-up Co.* (1982) 31 Cal.3d 774. As a result, Claimant and the Aggrieved Employees did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime wages, and vested vacation. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked. This resulted in earned, but unpaid, wages due and owing to Claimant and the



Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee’s separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last



day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations of Labor Code § 226(a). Specifically, Claimant alleges that he and the Aggrieved Employees were provided wage statements that failed to accurately state total hours worked due to the rounding policy described herein. Additionally, Claimant alleges that the Company’s wage statements failed to accurately state gross wages earned, all deductions, net wages earned, and all applicable hourly rates and the corresponding number of hours worked at each hourly rate. Claimant further alleges that the Company provided wage statements to the Aggrieved Employees that failed to state



the name and address of the legal entity that is the employer and, further, failed to state the start date and inclusive date for the pay period. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

IMI

4590 Allstate Drive, Riverside, CA 92501
Toll Free 888.959.8508

EXHIBIT “5”