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ROLANDO BECERRA

17
18 IN THE SUPERIOR COURT OF CALIFORNIA

19 FOR THE COUNTY OF SAN BERNARDINO / JUSTICE CENTER - COMPLEX

20 ROLANDO BECERRA, individually, and on
behalf of all others similarly situated,

21
22 Plaintiff,

23 v.

24 BLACK DIAMOND BLADE COMPANY, a
California corporation dba CUTTING EDGE
25 SUPPLY COMPANY; and DOES 1 through
10, inclusive,,

26 Defendants.
27
28

Case No.: CIVDS200062

[Assigned to Hon. David Cohn, Dept. S-26]

SETTLEMENT AGREEMENT

Complaint Filed: January 6, 2020
Trial Date: None set

1 This Settlement Agreement is made by and between Plaintiff Rolando Becerra (“Plaintiff”),
2 and each of the Class Members as defined herein, and Defendant Black Diamond Blade Company
3 d/b/a/ Cutting Edge Supply Company (“Defendant”), and is intended to resolve the pending action
4 entitled Rolando Becerra, Individually, And On Behalf Of All Others Similarly Situated, Plaintiff,
5 vs. Black Diamond Blade Company, A California Corporation Dba Cutting Edge Supply Company;
6 and Does 1 through 10, inclusive, Defendants, Case No. CIVDS200062 (San Bernardino County
7 Superior Court).

8
9 1. DEFINITIONS

10 1.1 The term “Agreement” or “Settlement Agreement” refers to this Settlement
11 Agreement.

12 1.2 The term “Settlement Administrator” means ILYM Group, Inc., or any other third-
13 party settlement administrator agreed to by the Parties for the purpose of administration of the
14 Settlement pursuant to the terms of this Agreement and as ordered by the Court.

15 1.3 The term “Court” as used herein means the Superior Court of California, County of
16 San Bernardino.

17 1.4 The term “Plaintiff” means Plaintiff Rolando Becerra.

18 1.5 The term “Defendant” means Defendant Black Diamond Blade Company d/b/a/
19 Cutting Edge Supply Company.

20 1.6 The term “Parties” means Plaintiff and Defendant.

21 1.7 The term “Action” means the action entitled Rolando Becerra, Individually, And On
22 Behalf Of All Others Similarly Situated, Plaintiff, vs. Black Diamond Blade Company, A
23 California Corporation Dba Cutting Edge Supply Company; and Does 1 through 10, inclusive,
24 Defendants, Case No. CIVDS200062 (San Bernardino County Superior Court).

25 1.8 The term “Maximum Settlement Amount” means an amount not to exceed
26 \$500,000.00, inclusive of attorneys’ fees, costs, and expenses directly related to the Action, which
27 includes all such fees and costs incurred to date, as well as all such fees and costs incurred in
28 documenting the Settlement and this Agreement, securing Court approval of the Settlement and this

1 Agreement, administering the Settlement, including the Settlement Administrator's fees and
2 expenses, and obtaining final order approving the Settlement and this Agreement and entering
3 judgment, the class representative payment to Plaintiff, and payment to the State of California
4 Labor Workforce and Development Agency ("LWDA"). The employer's share of payroll taxes
5 shall be paid separately from the Maximum Settlement Amount.

6 1.9 The term "Net Settlement Amount" means the Maximum Settlement Amount minus
7 Class Counsel's awarded attorneys' fees and costs, the class representative payment to Plaintiff, the
8 Settlement Administrator's fees and expenses, and the PAGA Payment.

9 1.10 The term "Class Counsel" means Moon & Yang, APC.

10 1.11 The term "Preliminary Approval Order" means the order of the Court that grants
11 preliminary approval of the Settlement.

12 1.12 The term "Final Approval Order" means the order of the Court that grants final
13 approval of the Settlement.

14 1.13 The "Effective Date" of the settlement will be the date on which the Final Award
15 becomes final. For purposes of this Section, the Final Award "becomes final" only after the Court
16 grants the Motion for Final Approval and upon the later of the following: (1) if no objection is
17 submitted, then seven days after the Court enters an Order Granting Final Approval; (2) if any
18 objection is submitted but if no appeal is filed, the expiration date of the time for the filing or
19 noticing of any appeal from, or other challenge to, the Order Granting Final Approval (this time
20 period shall not be less than 60 days after the Court's Order is entered); (3) the date of affirmance of
21 an appeal of the Order Granting Final Approval becomes final under the California Rules of Court;
22 or (4) the date of final dismissal of any appeal from the Order Granting Final Approval or the final
23 dismissal of any proceeding on review of any court of appeal decision relating to the Order
24 Granting Final Approval.

25 1.14 The term "Final Judgment" means the final judgment entered by the Court based
26 upon the Settlement.

27 1.15 The term "PAGA Payment" means the payment made to the LWDA pursuant to the
28 terms of this Agreement.

1 1.16 The term “Class Period” means the time from January 6, 2016 through the date on
2 which the Court issues the Preliminary Approval Order, unless Defendant designates an earlier date
3 pursuant to Section 10.2 of this Agreement.

4 1.17 The terms “Class” or “Class Members” means all individuals who are or who have
5 been employed by Defendant in California as non-exempt employees during any portion of the
6 Class Period.

7 1.18 The terms “Settlement Class” or “Participating Class Members” mean Class
8 Members who have not timely requested exclusion from the Settlement.

9 1.19 The term “Individual Settlement Payment” means the amount to be paid to a
10 Participating Class Member from the Net Settlement Amount pursuant to Section 10 below.

11 1.20 The term “Mediator” means Steven Serratore.

12 1.21 The term “Workweek(s)” refers to week(s) during the Class Period in which a Class
13 Member worked for Defendant.

14
15 2. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

16 2.1 On January 6, 2020, Plaintiff initiated the Action by filing a putative class action
17 complaint against Defendant. On March 12, 2020, Plaintiff filed the operative First Amended
18 Complaint, alleging the following claims: (1) failure to pay minimum and regular rate wages; (2)
19 failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and
20 permit rest periods; (5) failure to timely pay final wages upon termination; (6) failure to provide
21 accurate itemized wage statements; (7) violation of Business & Professions Code § 17200, *et seq.*;
22 and (8) violation of the Private Attorneys General Act of 2004 (“PAGA”).

23 2.2 On January 22, 2021, the Parties participated in private mediation conducted by the
24 Mediator, an experienced class action mediator. The settlement discussions were conducted at
25 arm’s length and the Parties reached a resolution of the Action after a day of mediation. The
26 Settlement is the result of an informed and detailed analysis of the risks facing all Parties in
27 litigating this case, including but not limited to, careful consideration of the legal and factual
28

1 obstacles to Plaintiff's prospects of obtaining class certification and on the merits, and Defendant's
2 defenses, as well as Defendant's potential exposure and the additional costs of litigating the Action.

3 2.3 This Agreement is intended to and does effectuate the full, final, and complete
4 resolution of the Action.

5 2.4 The Parties believe that continued litigation would be protracted, expensive,
6 uncertain, and contrary to their best interests and the interests of the Class. In light of these
7 realities, the Parties believe that this Settlement is the best way to resolve the disputes between
8 them.

9
10 3. JURISDICTION, ENFORCEMENT, AND INTERPRETATION

11 The Court has jurisdiction over the Parties and the subject matter of the Action. The Action
12 includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the
13 Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the
14 Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of
15 the terms of this Agreement and all orders and judgments entered in connection therewith, pursuant
16 to California Rules of Court Rule 3.769, *et seq.* and California Code of Civil Procedure Section
17 664.6, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting,
18 implementing, and enforcing the Settlement embodied in this Agreement and all orders and
19 judgments entered in connection therewith. The Parties and their counsel agree that a court, upon
20 motion, may enter judgment pursuant to the Agreement and California Code of Civil Procedure
21 Section 664.6 and the Agreement is admissible in evidence for purposes of enforcement pursuant to
22 California Evidence Code Section 1123. The Agreement will be interpreted and enforced under the
23 laws of the State of California without regard to its conflict of laws provisions. Any dispute arising
24 out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and
25 exclusively in the Superior Court, County of San Bernardino, and the Parties hereby consent to the
26 jurisdiction of the Court over them solely in connection therewith.

1 4. NO ADMISSION WITH RESPECT TO LIABILITY

2 4.1 The Parties agree that this Agreement reflects their good faith compromise of the
3 Action, based upon their assessment of the mutual risks and costs of further litigation and the
4 assessments of their respective counsel. This Agreement does not constitute, is not intended to
5 constitute, and will not be deemed to constitute, an admission of liability by the Parties as to the
6 merits, validity, or accuracy of any of the allegations or claims made against Defendant in the
7 Action or the appropriateness of class certification. Defendant denies each of Plaintiff's allegations
8 in their entirety, and alleges that Plaintiff and all other Class Members were provided legal
9 compensation and treated in all respects in accordance with California law.

10 4.2 Nothing in this Agreement, any action taken or made in implementation thereof,
11 statements, discussions, communications, nor any materials prepared, exchanged, issued, or used
12 during the course of the negotiations leading up to the Agreement, is intended by the Parties to, nor
13 will any of the foregoing constitute, be introduced, or be submitted in any way in the Action or any
14 other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any
15 violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order,
16 or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be
17 used in any proceeding in the Court that has as its purpose the interpretation, implementation, or
18 enforcement of the Agreement or any orders or judgments of the Court entered into in connection
19 therewith.

20 4.3 The Parties agree that Plaintiff's forthcoming motion for preliminary approval of the
21 Settlement, which will, among other things, seek certification of a class, is for purposes of the
22 Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification
23 will have no force or effect. The Parties agree that certification for purposes of the Settlement is in
24 no way an admission that class certification is proper under the standard applied to contested
25 certification motions and that this Agreement will not be submitted in this or any other proceeding
26 as evidence that (i) a class should be certified, or (ii) Defendant is liable to Plaintiff or the Class
27 Members. Further, neither this Agreement nor the Court's actions with regard to this Agreement
28 will be submitted in any court or other tribunal regarding the propriety of class certification or

1 collective treatment for purposes other than the settlement of the Action. In the event that this
2 Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to
3 be enforceable, Defendant will not be deemed to have waived, limited, or affected in any way, any
4 of its objections or defenses in the Action, including, but not limited to, its defenses in opposition to
5 class certification.

6
7 5. CLASS CERTIFICATION

8 For the purposes of this Agreement only, the Parties agree to the certification of the Class to
9 include all Class Members. As set forth above, Defendant expressly reserves its right to oppose
10 class certification should the Court decide to not approve this Settlement.

11
12 6. RELEASE AND WAIVER

13 6.1 Release and Waiver of Claims by Class Members. Participating Class Members, and
14 their successors, assigns, and/or agents, upon the later of the Effective Date or the date that
15 Defendant delivers payment to the Settlement Administrator for the amount due under this
16 Settlement, and by operation of the Final Approval Order, shall fully and finally release and
17 discharge Defendant, and each of its past, present, and future parent companies, subsidiaries, and
18 affiliates, and their respective shareholders, members, partners, representatives, fiduciaries, agents
19 (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys,
20 trustees, equity sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any
21 past, present, or future officers, directors and employees), and each of their predecessors,
22 successors, heirs, and assigns, and any individual or entity which could be jointly liable with
23 Defendant, or any of them (collectively, the “Released Parties”), from the Class Released Claims,
24 as defined herein. The Class Released Claims include all claims, rights, demands, liabilities, and
25 causes of action, whether in law or equity, arising from or related to the facts and/or claims alleged
26 in this Action, and all claims that were asserted or could have been asserted in the Action based
27 upon the claims and/or allegations in the Action, including but not limited to failure to pay
28 minimum wages, straight time compensation, overtime compensation, double-time compensation,

1 reporting time compensation, and interest; the calculation of the regular rate of pay; wages related
2 to rounding; meal periods and rest periods; payment for all hours worked, including off-the-clock
3 work; wage statements; deductions; failure to keep accurate records; unfair business practices based
4 upon the allegations in the Action; declaratory relief based upon the allegations in the Action;
5 penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-
6 wage penalties, and waiting-time penalties; interest; and attorneys' fees and costs ("Class Released
7 Claims"). To the extent that they arise from or are related to the facts and/or claims alleged in the
8 Action, were alleged in the Action, or could have been alleged in the Action, based upon the claims
9 and/or allegations asserted in the Action, the Class Released Claims also expressly include all
10 claims arising under the California Labor Code (including but not limited to Sections 200, 201,
11 201.1, 201.3, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 221, 222.5, 223, 224, 225, 225.5,
12 226, 226.2, 226.3, 226.7, 226.8, 227.3, 256, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5,
13 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*); the
14 Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys
15 General Act of 2004 ("PAGA") to the extent alleged in the operative complaint or Plaintiff's Notice
16 letter to the LWDA or that could have been alleged based on the facts or claims alleged in the
17 operative complaint and/or Plaintiff's Notice letter to the LWDA; California Business and
18 Professions Code Section 17200, *et seq.*; the California Civil Code, including but not limited to
19 Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and 11090; California Code of Civil
20 Procedure, including but not limited to Section 1021.5; the California common law of contract; the
21 FLSA, 29 U.S.C. Section 201, *et seq.*; federal common law; and the Employee Retirement Income
22 Security Act, 29 U.S.C. Section 1001, *et seq.* ("ERISA").

23 The Participating Class Members, agree, upon the later of the Effective Date or the date that
24 Defendant delivers payment to the Settlement Administrator for the amount due under this
25 Settlement and by operation of the Final Approval Order, to release any further attempt, by lawsuit,
26 administrative claim or action, arbitration, demand, or other action of any kind by each and all of
27 the Participating Class Members (including participation to any extent in any class or collective
28 action), to obtain a recovery against any of the Released Parties for the Released Claims. Class

1 Members who endorse their settlement checks waive and release any claims under the Fair Labor
2 Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) arising during the Class Period and reasonably
3 related to any or all of the aforementioned claims. This release excludes the release of claims not
4 permitted by law.

5 6.2 General Release and Waiver of Claims By Plaintiff. As of the later of the Effective
6 Date or the date that Defendant delivers payment to the Settlement Administrator for the amount
7 due under this Settlement, Plaintiff fully and finally releases the Released Parties, and each of them,
8 from any and all claims, known and unknown, under federal, state and/or local law, statute,
9 ordinance, regulation, common law, or other source of law, including but not limited to claims
10 arising from or related to his employment with Defendant and his compensation while an employee
11 of Defendant (“Plaintiff’s Released Claims”). Plaintiff’s Released Claims include all claims arising
12 from or related to the Action, including but not limited to failure to pay minimum wages, straight
13 time compensation, overtime compensation, double-time compensation, reporting time
14 compensation, and interest; the calculation of the regular rate of pay; wages related to rounding;
15 meal periods and rest periods; payment for all hours worked, including off-the-clock work; wage
16 statements; deductions; failure to keep accurate records; unfair business practices; declaratory
17 relief; penalties, including but not limited to recordkeeping penalties, wage statement penalties,
18 minimum-wage penalties, and waiting-time penalties; interest; and attorneys’ fees and costs.
19 Plaintiff’s Released Claims also expressly include all claims arising under the California Labor
20 Code (including but not limited to Sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5,
21 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7,
22 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194,
23 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders
24 of the California Industrial Welfare Commission; the California Private Attorneys General Act of
25 2004 (“PAGA”); California Business and Professions Code Section 17200, *et seq.*; the California
26 Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010,
27 11040, and 11090; California Code of Civil Procedure, including but not limited to Section 1021.5;
28 the California common law of contract; the FLSA, 29 U.S.C. Section 201, *et seq.*; federal common

1 law; and the Employee Retirement Income Security Act, 29 U.S.C. Section 1001, *et seq.*
2 (“ERISA”). Plaintiff’s Released Claims also include all claims for lost wages and benefits,
3 emotional distress, retaliation, punitive damages, and attorneys’ fees and costs arising under federal,
4 state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by
5 way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of
6 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the
7 California Fair Employment and Housing Act; and the law of contract and tort. This release
8 excludes the release of claims not permitted by law. Plaintiff’s Released Claims include all claims,
9 whether known or unknown. Even if Plaintiff discover facts in addition to or different from those
10 that he now knows or believes to be true with respect to the subject matter of Plaintiff’s Released
11 Claims, those claims will remain released and forever barred. Plaintiff stipulates and agrees that,
12 upon the Effective Date, Plaintiff shall be deemed to have, and by operation of the Final Approval
13 Order shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
14 provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar
15 provision under federal or state law, which provides:

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

22 Plaintiff may hereafter discover facts in addition to or different from those Plaintiff now knows or
23 believes to be true with respect to the subject matter of Plaintiff’s Released Claims and this General
24 Release, but Plaintiff, upon the Effective Date, shall be deemed to have, and by operation of the
25 Final Approval Order shall have, fully, finally, and forever settled and released any and all of the
26 claims released pursuant to the General Release, whether known or unknown, suspected or
27 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
28 theory of law or equity now existing or coming into existence in the future, including, but not

1 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
2 law, or rule, without regard to the subsequent discovery or existence of such different or additional
3 facts.

4 Excluded from this Release of Claims by Plaintiff are those claims asserted by Plaintiff in
5 his individual lawsuit filed in the Superior Court of California, County of San Bernardino entitled
6 Rolando Becerra, an individual, Plaintiff v. Black Diamond Blade Company, a California
7 Corporation and DOES 1 through 100, inclusive, Defendants, Case No. CIVDS2006528, which are
8 the subject of a separate settlement.

9 6.3 PAGA Payment. The Parties hereto, including the Class Members, stipulate and
10 agree that Individual Settlement Payments and the payment to the LWDA compensate the Class
11 Members and the LWDA for all civil penalties that may be due to them under PAGA based upon
12 the facts alleged in the Action. As such, once the Settlement Administrator has distributed the full
13 payment as described in Section 10 below, Defendant cannot be liable henceforth for any penalties
14 pursuant to PAGA in connection with the Action. The Parties hereto, including the Class Members,
15 further stipulate and agree that even if any Class Member is considered or determined to be an
16 “aggrieved employee” for purposes of PAGA, said Class Member waives any potential right to any
17 penalty prescribed by PAGA relating to the Released Claims, notwithstanding the LWDA’s right, if
18 any, to its portion of any related penalties.

19
20 7. NOTICE AND OPPORTUNITY TO OPT OUT OR OBJECT

21 7.1 Notice to the Class. The Parties submit a Notice of Class Action Settlement (“Class
22 Notice”), in the form attached hereto as Exhibit 1, to the Court for approval. The Class Notice will
23 include, nonexclusively, information regarding the nature of the Action; a summary of the
24 substance of the Settlement; the definition of the Class; the formula used to determine the
25 Individual Settlement Payments for the Class Members; the number of Workweeks credited to each
26 Class Member and his or her estimated Individual Settlement Payment; the procedures and
27 deadlines for objecting to the Settlement, seeking exclusion from the Settlement, and/or disputing
28 the number of Workweeks credited to him or her; and the date for the Final Approval Hearing.

1 7.2 Mailing of the Class Notice. Within thirty (30) calendar days of the Preliminary
2 Approval Order, Defendant shall provide the Settlement Administrator with the name, last known
3 mailing address, Social Security number, and number of Workweeks for each Class Member during
4 the Class Period in a readable Microsoft Excel spreadsheet (collectively the “Class List and Data”).
5 In no event will this information ever be shared with or provided to Class Counsel. However,
6 Defendant shall provide Class Counsel with an anonymized list of Class Members and their
7 respective workweeks worked within the Class Period to permit Class Counsel to examine the
8 workweek data for any irregularities.

9 Within ten (10) calendar days after receipt of the Class List and Data, the Settlement
10 Administrator shall mail the Class Notice to the Class Members via first-class regular U.S. mail.
11 Class Members will have sixty (60) calendar days from the mailing of the Class Notice to submit a
12 request for exclusion, dispute, or objection (“Response Deadline”). The date of initial mailing of
13 the Class Notice by the Settlement Administrator to the Class Members is the “Initial Mailing.”
14 Prior to mailing the Class Notice to Class Members, the Settlement Administrator will perform one
15 search based on the National Change of Address Database information to update and correct the
16 Class List and Data for any known or identifiable address changes.

17 If, within forty-five (45) calendar days of the Initial Mailing, a Class Notice is returned with
18 a forwarding address, then within five (5) calendar days of receiving the undeliverable Class
19 Notice, the Settlement Administrator shall forward the original Class Notice to the updated address
20 via first-class regular U.S. mail indicating on the Class Notice the date of such re-mailing. If a
21 Class Notice is returned within forty-five (45) calendar days of the Initial Mailing as undeliverable
22 without a forwarding address, then within five (5) calendar days of receiving the undeliverable
23 Class Notice, the Settlement Administrator will promptly attempt to determine the correct address
24 using a skip-trace search, and will then perform a single re-mailing to any addresses located
25 indicating the date of the re-mailing on the Class Notice. Those Class Members who receive a re-
26 mailed Class Notice (as a result of the Settlement Administrator locating an updated address by way
27 of skip-trace search, forwarding address provided by the post office, or request from the Parties or
28 Class Members), will have the later of (a) fourteen (14) calendar days from the date the Class

1 Notice is re-mailed or (b) the Response Deadline to postmark a request for exclusion, objection, or
2 dispute regarding Workweeks to the Settlement Administrator (“Extended Response Deadline”).

3 In the event that the procedures in this Section are followed and the intended recipient of a
4 Class Notice still does not receive the Class Notice, the intended recipient shall be bound by all
5 terms of the Settlement and any Final Approval Order and Final Judgment entered by the Court if
6 the Settlement is approved by the Court. In the event the procedures in this Section are followed
7 and a Class Member does not ultimately return a request for exclusion and/or the request for
8 exclusion is rejected by the Settlement Administrator, the Class Member shall be deemed a
9 Participating Class Member and will be bound by all terms of the Settlement and any Final
10 Approval Order and Final Judgment entered by the Court if the Settlement is approved by the
11 Court.

12 7.3 Objection to the Settlement. A Participating Class Member may object to the
13 Settlement in writing, in person, or through an attorney. To assert a written objection to the
14 Settlement, a Participating Class Member must submit an objection to the Settlement Administrator
15 by first class U.S. mail at the address specified on the Class Notice, not later than the Response
16 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline. The date
17 of the postmark will be the exclusive means for determining whether an objection has been timely
18 submitted. All written objections must include: (1) the objector’s full name, address, last four digits
19 of his or her Social Security number, and signature; (2) the case name and number; (3) the factual
20 and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the
21 objector is represented by an attorney and providing the contact information of any such attorney;
22 and (5) whether the objector plans to appear at the Final Approval Hearing. Any person who fails
23 to timely submit their written objections in the manner specified above may still appear and object
24 at the Final Approval Hearing. Participating Class Members who fail to object in the manners
25 specified above shall be deemed to have waived any objections and shall be foreclosed from
26 making any objection (whether by appeal or otherwise) to the Settlement. If a Participating Class
27 Member objects to this Settlement, the Participating Class Member will remain a member of the
28 Settlement Class, and if the Court grants final approval of the Settlement, he or she will be bound

1 by the terms of the Settlement and any Final Approval Order and Final Judgment. Within three (3)
2 business days of receipt of an objection, the Settlement Administrator shall provide counsel for the
3 Parties with a copy of the objection. No later than thirty (30) calendar days before the Final
4 Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a
5 complete list of Participating Class Members who have submitted an objection. Prior to the Final
6 Approval Hearing, the Settlement Administrator shall submit copies of the objections that it has
7 received to the Court by way of declaration.

8 7.4 Request for Exclusion from the Settlement. Class Members who wish to exclude
9 themselves from the Settlement must submit a valid and timely request for exclusion (“Request for
10 Exclusion”) to the Settlement Administrator by mail, postmarked on or before the Response
11 Deadline or, in the instance of a re-mailed Class Notice, the Extended Response Deadline. The date
12 of the postmark on the return mailing envelope will be the exclusive means for determining whether
13 a Request for Exclusion has been timely submitted. A Request for Exclusion must be in writing
14 which contains: (1) the Class Member’s full name, current address, last four digits of his/her Social
15 Security number; (2) the case name and number; (3) a clear statement that the Class Member wishes
16 to be excluded from the Settlement; (4) the Class Member’s signature and the date of signature.
17 The name and last four digits of the Social Security number provided by the Class Member on the
18 Request for Exclusion must match Defendant’s records as provided to the Settlement Administrator,
19 or match Defendant’s records for that particular Class Member. The name and Social Security
20 number provided by the Class Member will be deemed to match Defendant’s records only if: (1)
21 both the first name and the last name and the last four digits of the Social Security number provided
22 by the Class Member match Defendant’s records; (2) the first name and the last four digits of the
23 Social Security number provided by the Class Member match Defendant’s records and it appears
24 the last name has been changed as a result of a change in marital status or is a shortened or
25 lengthened version of the name that appears in Defendant’s records; or (3) the last four digits of the
26 Social Security number and last name match Defendant’s records and the first name provided is
27 either a nickname or a shortened or lengthened version of the name that appears in Defendant’s
28 records. Each Class Member who does not submit a Request for Exclusion in compliance with this

1 paragraph will be deemed to be a Participating Class Member. Participating Class Members will be
2 bound by all terms of the Settlement Agreement and the Final Approval Order and Final Judgment.
3 Any Class Member who submits a Request for Exclusion will not be a Participating Class Member,
4 will not be entitled to receive any Individual Settlement Payment, and will not be bound by this
5 Agreement or have any right to object, appeal, or comment thereon. No later than thirty (30)
6 calendar days before the Final Approval Hearing, the Settlement Administrator shall provide
7 counsel for the Parties with a complete list of all Class Members who have submitted a valid and
8 timely Request for Exclusion.

9 7.5 No Solicitation of Objections to or Exclusions from the Settlement. The Parties
10 agree to use their best efforts to carry out the terms of this Agreement. At no time shall any of the
11 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests
12 for Exclusion, objections to the Settlement, or appeal from or seek review of the Court's
13 Preliminary Approval Order, Final Approval Order, or Final Judgment.

14
15 8. DEFENDANT'S RIGHT TO RESCIND

16 If either (i) 10% or more of the Class Members, or, (ii) a number of Class Members whose
17 Individual Settlement Payments in the aggregate are 10% or more of the Maximum Settlement
18 Amount, either opt out of and/or object to the Settlement, or if both (i) and (ii) occur, Defendant
19 may, at its election, rescind the Settlement and all actions taken in its furtherance of it will be
20 thereby null and void. If Defendant exercises this right of recession, it must do so in writing, that is
21 mailed to Class Counsel by overnight mail, addressed to: Scott Leviant of Moon & Yang, APC,
22 1055 W. Seventh Street, Suite 1880, Los Angeles, California 90017 within thirty (30) calendar days
23 of the Response Deadline. If the option to rescind is exercised, then Defendant shall be solely
24 responsible for all Settlement Administration Costs accrued to that point.

25
26 9. DISPUTES REGARDING WORKWEEKS

27 An Individual Settlement Payment shall be mailed to each Class Member who does not
28 submit a valid and timely Request for Exclusion pursuant to this Agreement. The Class Notice

1 mailed to each Class Member will indicate the Workweeks credited to each Class Member and the
2 estimated Individual Settlement Payment that he/she is to receive based upon Defendant's records
3 and the formula set forth in Section 10 below. If a Class Member objects to the Workweeks
4 credited to him or her, as stated in the Class Notice, the Class Member must submit written
5 correspondence to the Settlement Administrator that is postmarked no later than the Response
6 Deadline, or in the instance of a re-mailed Class Notice, the Extended Response Deadline,
7 explaining the basis for the dispute and including any supporting documentation showing that the
8 Workweeks credited to him or her is inaccurate. Defendant's records will be presumed
9 determinative, absent credible evidence to rebut the accuracy of the Workweeks credited to a Class
10 Member based thereon. The Settlement Administrator will evaluate the evidence submitted by the
11 Class Member and make a recommendation to the Parties as to which figures should be applied. If
12 the Parties disagree with the Settlement Administrator's recommendation, the dispute will be
13 presented to the Court for determination.

14
15 10. COMPUTATION AND DISTRIBUTION OF PAYMENTS

16 10.1 Maximum Settlement Amount. The Maximum Settlement Amount has been agreed
17 to by Plaintiff and Defendant, based on analysis and assessment of the value of the claims of the
18 Class. It is expressly understood that if the Court awards less than the total amounts requested to be
19 awarded for Attorneys' Fees, Litigation Costs and Expenses, PAGA Payment to the LWDA,
20 Settlement Administration Costs, and Class Representative Payment, or as otherwise provided
21 herein, the difference in any such amounts will be added to the Net Settlement Proceeds.

22 10.2 Escalator Clause. Defendant estimated for purposes of mediation there were
23 approximately 17,000 workweeks between the start of the Class Period and October 30, 2020. This
24 number would be expected to increase proportionally for the passage of time since that date. If the
25 proportionate increase of workweeks exceeds what would be expected by more than 15% by the
26 time of Preliminary Approval, Defendant, at its sole discretion, has the option of either: (1) agreeing
27 to increase the Maximum Settlement Amount on a pro rata basis according to the number of
28 additional workweeks over the 15% cap, or (2) agreeing to close the Class Period just before the

1 date the workweeks exceeds this 15% cap.

2 10.3 Distribution to the Participating Class Members. Individual Settlement Payments
3 will be determined as follows: Defendant will provide the Settlement Administrator with the
4 number of Workweeks credited to each Participating Class Member during the Class Period. The
5 Settlement Administrator will then calculate the total number of Workweeks worked by all
6 Participating Class Members during the Class Period (“Total Workweeks”). To determine the
7 Individual Settlement Payment for each Participating Class Member, the Settlement Administrator
8 will (1) divide each Participating Class Member’s respective Workweeks by the Total Workweeks,
9 and (2) multiply the resulting figure by the Net Settlement Amount. The Individual Settlement
10 Payment will be reduced by any required legal deductions for each Participating Class Member.
11 Any residual amounts of the Maximum Settlement Amount that are not distributed in full as
12 contemplated by this Agreement shall be distributed pro rata to Participating Class Members.

13 10.4 Class Representative Payment to Plaintiff. Plaintiff will apply to the Court for an
14 enhancement payment of up to \$10,000.00 (the “Class Representative Payment”), to be paid out of
15 the Maximum Settlement Amount. Defendant will not oppose such application, so long as it is
16 consistent with the provisions of this Agreement. Any amounts awarded for the Class
17 Representative Payment to Plaintiff less than the amount listed above will result in the non-awarded
18 funds being part of the Net Settlement Amount available for distribution to the Participating Class
19 Members. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on
20 this payment and shall hold harmless the Released Parties from any claim or liability for taxes,
21 penalties or interest arising as a result of the payment. Plaintiff is solely responsible for providing a
22 completed IRS W-9 form to the Settlement Administrator prior to distribution. The Settlement
23 Administrator will issue to Plaintiff an IRS Form 1099 reflecting his Class Representative Payment.

24 10.5 PAGA Payment. The Parties agree to allocate the amount of \$28,000.00 from the
25 Maximum Settlement Amount pursuant to PAGA. Seventy-five percent (75%) of this amount, or
26 \$21,000.00, will be paid to the LWDA and twenty-five percent (25%) of this amount, or \$7,000.00,
27 will be a part of the Net Settlement Amount which will be distributed to the Participating Class
28 Members in accordance with the distribution formula, described in Section 10.3 above. It is

1 expressly understood that if the Court awards less than the total amounts requested to be awarded
2 for the PAGA Payment, the difference in any such amount will be a part of the Net Settlement
3 Amount. In the event that the Court finds the Parties' allocation of proceeds from the Maximum
4 Settlement Amount to PAGA to be insufficient, the Parties expressly reserve the right to amend this
5 Agreement to increase the allocated amount to a level that satisfies the Court's discretion, without
6 increasing the Maximum Settlement Amount.

7 10.6 Attorneys' Fees and Litigation Costs and Expenses. Class Counsel shall be entitled
8 to apply to the Court for attorneys' fees payable to Class Counsel in the amount of up to 33.33% of
9 the Maximum Settlement Amount, which is \$166,650.00 ("Attorneys' Fees"), and litigation costs
10 and expenses in an amount not to exceed \$15,000.00 ("Litigation Costs and Expenses"). The
11 amounts set forth above for Attorneys' Fees and Litigation Costs and Expenses will cover all work
12 performed and all fees and costs incurred by Class Counsel to date, and all work to be performed
13 and all fees to be incurred in connection with the litigation of the Action, seeking preliminary and
14 final approval by the Court of this Settlement and Agreement, the administration of the Settlement,
15 seeking and obtaining a Preliminary Approval Order and Final Approval Order, and obtaining Final
16 Judgment. Defendant agrees not to oppose such an application for Attorneys' Fees and Litigation
17 Costs and Expenses, so long as it is consistent with the provisions of this Agreement. Class
18 Counsel is solely responsible for providing completed IRS W-9 forms to the Settlement
19 Administrator prior to distribution. The Settlement Administrator shall issue an IRS Form 1099 to
20 Class Counsel reflecting the awarded Attorneys' Fees and Litigation Costs and Expenses. Should
21 Plaintiff and/or Class Counsel request a lesser amount for Attorneys' Fees and/or the Court
22 approves a lesser amount, the difference between the lesser amount and \$166,650.00 will be a part
23 of the Net Settlement Amount. Should Plaintiff and/or Class Counsel request a lesser amount for
24 its Litigation Costs and Expenses and/or the Court approves a lesser amount, the difference between
25 the lesser amount and \$15,000.00 will be added to the Net Settlement Amount. Class Counsel will
26 not be permitted to petition the Court for, or accept, any additional payments for attorneys' fees,
27 costs, or expenses in connection with the Action. Plaintiff, Class Counsel, and Class Members shall
28 assume full responsibility and liability for the payment of taxes due on such awards.

1 Defendant's payment of the Attorneys' Fees and Litigation Costs and Expenses awarded to
2 Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person,
3 attorney, or law firm for attorneys' fees, costs, or expenses in the Action incurred by any attorney
4 on behalf of the Plaintiff and the Class Members, and shall relieve Defendant, the Settlement
5 Administrator, and Defendant's counsel of any other claims or liability to any other attorney or law
6 firm for any attorneys' fees, costs, and expenses to which any of them may claim to be entitled on
7 behalf of Plaintiff and/or the Class Members.

8 10.7 Settlement Administrator. Subject to approval by the Court, the Parties agree that
9 the fees and expenses of the Settlement Administrator in relation to services rendered in Settlement
10 of the Action shall be deducted from the Maximum Settlement Amount, not to exceed \$15,000.00
11 ("Settlement Administration Costs"). If the Court awards less than the total amount allocated for
12 Settlement Administration Costs, the difference in any such amounts will be a part of the Net
13 Settlement Proceeds.

14 The Settlement Administrator shall have the authority to mail the Class Notice; establish a
15 qualified settlement fund account and administer the Maximum Settlement Amount; and disburse
16 funds from the Maximum Settlement Amount in accordance with this Agreement. The Settlement
17 Administrator shall calculate the Individual Settlement Payments to be paid to the Participating
18 Class Members in accordance with the terms and provisions of this Agreement; distribute the Class
19 Notice; determine eligibility for payment to a Class Member; resolve any disputes regarding the
20 Workweeks credited to each Class Member; keep track of those Class Members requesting to be
21 excluded from the Settlement, and provide information regarding objections and Requests for
22 Exclusion to the Parties' counsel; mail the Individual Settlement Payment checks to Participating
23 Class Members; calculate required tax withholdings and reporting; and perform such other tasks
24 necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the Court
25 orders the Parties to perform. The Settlement Administrator shall regularly report to the Parties, in
26 written form, the substance of the work performed.

27 The Settlement Administrator will submit to the Court, in conjunction with the motion for
28 final approval, a declaration providing, among other things, the number of Class Notices it mailed

1 to the Class Members, the number of Class Notices that it re-mailed, the number of Class Notices
2 that were ultimately undeliverable, the number of Requests for Exclusion and objections that it
3 received, the number of defective Requests for Exclusion and objections that it received, the total of
4 its charges for services rendered, and the anticipated future charges contemplated in order to bring
5 the administration of the Settlement and distribution of payments to completion. Any disputes
6 relating to the Settlement Administrator's ability and need to perform its duties shall be referred to
7 the Court.

8 10.8 Time for Funding of the Settlement. Prior to the Effective Date of the Settlement,
9 Defendant will not be required to fund the Settlement, in whole or in part, through the Settlement
10 Administrator or any third party. Within thirty (30) calendar days after the Effective Date,
11 Defendant shall provide the Settlement Administrator with sufficient funds to make all the
12 payments required under this Settlement. Prior thereto, Defendant shall not have any obligation to
13 segregate the funds comprising the Maximum Settlement Amount from its other assets and will
14 retain exclusive authority over, and responsibility for, those funds.

15 10.9 Time for Distribution. Within thirty (30) calendar days after receipt of the
16 Maximum Settlement Amount from Defendant, the Settlement Administrator shall make the
17 following payments as approved by the Court: (1) Individual Settlement Payments to Participating
18 Class Members; (2) the Class Representative Payment; (3) the Attorneys' Fees; (4) the Litigation
19 Costs and Expenses; (5) the PAGA Payment; and (6) payment to the Settlement Administrator for
20 its administration duties performed and to be performed to conclude its obligations pursuant to this
21 Agreement.

22 10.10 Allocation. All Individual Settlement Payments will be allocated as follows: 15%
23 as wages and 85% for penalties and interest. The wage portion of each Individual Settlement
24 Payment will be subject to W-2 reporting and, therefore, normal employee's share of payroll taxes
25 and withholdings will be deducted pursuant to applicable state and federal law. Defendant shall be
26 responsible for paying employer-side taxes separately from the Maximum Settlement Amount.
27 Participating Class Members will be issued an IRS Form 1099 for the portion of their Individual
28 Settlement Payments that is treated as interest and penalties and any other non-taxable items, and

1 will assume full responsibility and liability for the payment of taxes due on such awards, if any.
2 The Parties make no representations about the tax consequences to the portion of the Individual
3 Settlement Payments representing interest and penalties.

4 10.11 Negotiation of Individual Settlement Payments. Participating Class Members will
5 have one hundred and eighty (180) calendar days from the date on which the Individual Settlement
6 Payment check is issued, to cash or deposit the Individual Settlement Payment check. Thereafter,
7 the Individual Settlement Payment checks will be cancelled and funds associated with said
8 cancelled check ("Unused Funds") will be transmitted to the State Controller's Unclaimed Property
9 Fund in the name of the Participating Class Members, as an alternative distribution for which there
10 is good cause, under California Code of Civil Procedure Section 384(b).

11
12 11. TAXATION AND INTEREST

13 11.1 The Maximum Settlement Amount includes any and all interest accruals and no
14 additional interest shall be due under any circumstances.

15 11.2 Plaintiff and Participating Class Members represent and warrant that they
16 understand that it is their sole obligation to pay appropriate federal, state, and local income taxes
17 on any amounts they receive under this Agreement that lawfully qualify as taxable income.

18 11.3 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR
19 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
20 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
21 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
22 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
23 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
24 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
25 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
26 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
27 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
28 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX

1 ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
2 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
3 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
4 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
5 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
6 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
7 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
8 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
9 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
10 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
11 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
12 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
13 AGREEMENT.

14
15 12. COURT APPROVAL

16 12.1 Following the Preliminary Approval Order, if Defendant does not exercise its right
17 to cancel the Settlement solely as provided for herein, a motion for final approval of the
18 Settlement will be filed by Class Counsel, which, if not separately filed by Class Counsel, will
19 include a request for Attorneys' Fees, Litigation Costs and Expenses, and Class Representative
20 Payment as provided for herein, which Defendant will not oppose. The Parties agree to take all
21 steps as may be reasonably necessary to secure final approval of the Settlement as quickly as
22 possible, to the extent not inconsistent with the terms of this Agreement, and will not take any
23 action adverse to each other in obtaining Court approval, and, if necessary, appellate approval, of
24 the Agreement in all respects.

25 12.2 If the Court does not grant preliminary approval and/or final approval of the
26 Settlement, or if the Court's Final Approval Order and Final Judgement are reversed or materially
27 modified on appeal, then this Settlement will become null and void.

1 12.3 In the event the Court declines to enter the Final Approval Order and Final
2 Judgment, this Agreement shall be null and void and any order or judgment entered by the Court
3 in furtherance of this Agreement shall be treated as void. In such a case, the Parties and any funds
4 to be awarded under this Settlement shall be returned to their respective statuses as of the date and
5 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
6 respects as if this Agreement had not been executed, except that any fees and expenses already
7 reasonably incurred by the Settlement Administrator shall be paid by Defendant.

8
9 13. MISCELLANEOUS PROVISIONS

10 13.1 No Effect on Regular Rate or Overtime Compensation. Participating Class Members
11 will receive payment under the Settlement, as determined by the Settlement Administrator in
12 accordance with this Agreement. The Parties agree that this payment is not viewed as additional
13 compensation for purposes of calculating a “regular rate” of pay under California or federal law for
14 the period during which it is received, and no additional overtime compensation is required as a
15 result of such payment; further, any claim to entitlement to any additional overtime compensation is
16 expressly waived under the terms of this Agreement. No person or entity shall have any claim
17 against Defendant, Defendant’s Counsel, Plaintiff, any Class Members, Class Counsel, or the
18 Settlement Administrator based upon distributions and payments made in accordance with this
19 Agreement.

20 13.2 No Effect on Employee Benefits. The Individual Settlement Payments to be paid to
21 Plaintiff and Participating Class Members and the Class Representative Payment to be paid to
22 Plaintiff shall be deemed not to be pensionable earnings and shall not have any effect on the
23 eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay,
24 retirement plans, etc.) of Plaintiff or any Participating Class Members. Such payments do not
25 represent any modification of Plaintiff’s and Participating Class Members’ previously credited
26 hours of service or other eligibility criteria under any employee pension benefit plan or employee
27 welfare benefit plan sponsored by Defendant. Further, any Individual Settlement Payment or Class
28 Representative Payment shall not be considered “compensation” in any year for purposes of

1 determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee
2 welfare benefit plan sponsored by Defendant.

3 13.3 Headings. The descriptive headings of any paragraphs or sections of this Agreement
4 are inserted for convenience of reference only and do not constitute a part of this Agreement.

5 13.4 Final Agreement. This Agreement constitutes the exclusive and final understanding
6 and expression of all agreements between the Parties with respect to the resolution of the Action,
7 and supersedes all prior agreements and understandings between the Parties relating to the subject
8 matter hereof. Plaintiff, on behalf of herself and on behalf of the Class Members, and Defendant
9 enter into this Agreement based solely upon its terms and not in reliance upon any representations
10 or promises other than those contained in this Agreement.

11 13.5 Amendment or Modification. This Agreement may be amended or modified only by
12 a written instrument signed by counsel for the Parties, or their successors, and approved by the
13 Court.

14 13.6 Counterparts/Facsimile. This Agreement may be executed in one or more actual or
15 telecopied counterparts, all of which will be considered one and the same instrument and all of
16 which will be considered duplicate originals. A signature by facsimile on this Agreement shall be as
17 legally binding as an original signature.

18 13.7 Authority. Counsel for all Parties represent and warrant they are expressly
19 authorized by the Parties whom they represent to negotiate this Agreement and to take all
20 appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to
21 effectuate its terms, and to execute any other documents required to effectuate the terms of this
22 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts
23 to effect the implementation of the Settlement. In the event that the Parties are unable to reach
24 agreement on the form or content of any document needed to implement the Settlement, or on any
25 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
26 Parties shall seek the assistance of the Court to resolve such disagreement. The person signing this
27 Agreement on behalf of Defendant represents and warrants that he is authorized to sign this
28 Agreement on its behalf.

1 13.8 Binding on Successors and Assigns. This Agreement shall be binding upon, and
2 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

3 13.9 Cooperation and Drafting. Each of the Parties has cooperated in the drafting and
4 preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall
5 not be construed against any of the Parties.

6 13.10 Invalidity of Any Provision. Before declaring any provision of this Agreement
7 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
8 consistent with applicable precedents so as to define all provisions of this Agreement as valid and
9 enforceable.

10 13.11 Plaintiff's Waiver of Right to Be Excluded. By signing this Agreement, Plaintiff is
11 bound by the terms herein stated and further agrees not to submit a Request for Exclusion from the
12 Settlement. Any such Request for Exclusion shall therefore be void and of no force or effect.
13 Plaintiff also agrees to not disparage the Settlement to Class Members or encourage, in any way,
14 Class Members to submit or not to submit a request for exclusion. In addition, neither Plaintiff nor
15 Class Counsel will initiate any contact with Class Members about the amount or terms of the
16 Settlement.

17 13.12 Confidentiality. Plaintiff and Class Counsel agree that they will not issue any press
18 releases, initiate any contact with the press, respond to any press inquiry or have any
19 communication with the press about the amount or terms of the Settlement. Class Counsel may
20 respond to press inquiries by stating the matter has been resolved and refer the press to court filings.
21 In addition, Plaintiff and Class Counsel agree that they will not engage in any advertising or
22 distribute any marketing materials specifying any material terms relating to the Settlement of this
23 case, including the identity of Defendant and/or any information that identifies Defendant. The
24 Settlement Administrator shall not create nor maintain any dedicated, independent website
25 regarding this Settlement at any time. Class Counsel may discuss the terms of the proposed
26 Settlement with Class Members, but they must advise Class Members that the Settlement is not
27 final and must be approved by the Court. Plaintiff is prohibited from discussing the terms or the
28

fact of the settlement with third parties other than (1) his immediate family members, and/or (2) his accountants or lawyers as necessary for tax purposes.

13.13 Defense. To the extent permitted by law, this Settlement may be plead as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted with respect to the Released Claims against the Released Parties in breach of or contrary to the Settlement.

13.14 Final Judgment. The Parties agree that, upon final approval of the Settlement, a Final Judgment will be made and entered, resolving the Action in its entirety.

WHEREFORE, Plaintiff, on behalf of herself and the Participating Class Members, and Defendant, have executed this Agreement as of the dates set forth below.

Executed on March 3/22/2021, 2021

DocuSigned by:

PLAINTIFF ROLANDO BECERRA

Executed on March 25, 2021


DEFENDANT BLACK DIAMOND BLADE
COMPANY DBA CUTTING EDGE SUPPLY
COMPANY

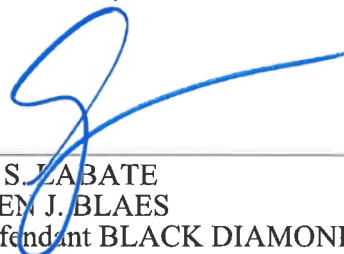
MOON & YANG, APC

Executed on March 22, 2021


SCOTT LEVIANT
ANI MARTIROSIAN
For Plaintiff Rolando Becerra

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Executed on March 25, 2021


GREG S. LABATE
LAUREN J. BLAES
For Defendant BLACK DIAMOND BLADE
COMPANY DBA CUTTING EDGE SUPPLY
COMPANY

**Settlement
Agreement:
Exhibit “1”**

NOTICE OF CLASS ACTION SETTLEMENT

ROLANDO BECERRA v. BLACK DIAMOND BLADE COMPANY d/b/a CUTTING EDGE SUPPLY COMPANY

San Bernardino County Superior Court, Case No. CIVDS200062

**This is not an advertisement.
A state court authorized this Notice.
Your rights may be affected by this Notice.**

To current and former individuals employed as hourly non-exempt employees by Black Diamond Blade Company d/b/a Cutting Edge Supply Company (“Defendant” or “BDBC”) in California during any portion of time during the period from January 6, 2016 through [PA Date] (individually referred to as “Class Member” or collectively as “Class”).

PURPOSE OF THIS NOTICE

A judge of San Bernardino County Superior Court has ordered that this Notice be sent to you. On [PA Date], the Court preliminarily approved a settlement, which was reached between Plaintiff Rolando Becerra (“Plaintiff”), as an individual and on behalf of all others similarly situated and each of the Class Members, and Defendant in the above-captioned lawsuit now pending in the Superior Court for the State of California for the County of San Bernardino, and preliminarily appointed Plaintiff as Class Representative.

You have received this Notice because BDBC’s records indicate that you worked as a hourly non-exempt employee for BDBC in California for some time during the period of January 6, 2016 through [PA Date] (the “Class Period”).

This Notice advises you of your options under this settlement, which include how you can participate in this settlement and receive your share of the settlement proceeds, how you can exclude yourself from the settlement, or how you can object to the settlement.

BACKGROUND REGARDING THE LAWSUIT

On January 6, 2020, Plaintiff Rolando Becerra filed a Class Action Complaint against Defendant. On March 12, 2020, Plaintiff filed his First Amended Complaint, which alleges the following claims against Defendant: (1) failure to pay minimum and regular rate wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages upon termination; (6) failure to provide accurate itemized wage statements; (7) violation of Business & Professions Code § 17200, et seq.; and (8) violation of the Private Attorneys General Act of 2004 (“PAGA”) (the “Lawsuit”).

Defendant denies each and every allegation in the Lawsuit, denies any liability or wrongdoing of any kind, and believes that it treated, and continues to treat, its employees fairly and in full compliance with the law.

YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER

If you are a Class Member as defined above, you have three options under the settlement. Each option has its own consequences. You should read and understand each option before making your decision.

Option One: You Can Participate As A Class Member

If you want to participate in the settlement and receive your share of the settlement proceeds, you do not need to do anything. By doing nothing, you will automatically participate in the settlement, receive a settlement payment, and be bound by all settlement terms, including the release of claims. If you want to participate in the settlement, you must not mail a Request for Exclusion as outlined in Option Two below. As Participating Class Members, the approximate amount you will receive and a description of how the amount was calculated is described below in the section titled “How Much Can I Expect To Receive?” and in the enclosed Notice of Settlement Award. If you choose this Option 1, you will be bound by this settlement, and you will release the Released Parties from the Released Claims which are listed below under the section entitled “What Do I Give Up By Participating In The Settlement?”

Option Two: You Can Exclude Yourself From The Settlement

If you do not wish to participate in or be bound by the settlement, you must complete and mail the enclosed Exclusion Form to ILYM Group, Inc. (the “Settlement Administrator”) at the address listed below in the section titled “For More Information” postmarked on or before **[RESPONSE DEADLINE]**. If you request to be excluded from the settlement, you will not be a Participating Class Member, will not receive any money from the settlement, and will not be considered to have released the Released Claims. By excluding yourself from the settlement, you will retain the Released Claims and you will be free to pursue them at your own cost, if you choose to do so.

A valid Request for Exclusion must be in writing and contain: (1) your full name, current address, last four digits of your Social Security number; (2) the case name and number (Rolando Becerra v. Black Diamond Blade Company d/b/a Cutting Edge Supply Company, San Bernardino County Superior Court, Case No. CIVDS200062); (3) a clear statement that the you wish to be excluded from the settlement; and (4) your signature and date of signature.

Option Three: You Can Object To The Settlement

If you are a Class Member, and you do not request exclusion from the settlement, you may object to the settlement before final approval of the settlement by the Court. However, if the Court rejects your objection, you will still be bound by the terms of the settlement, including the release, unless you have submitted a valid and timely Request for Exclusion.

If you choose to object to the settlement in writing, you must mail your objection to the Settlement Administrator at the address listed below in the section titled “For More Information” under Settlement Administrator, postmarked on or before **[RESPONSE DEADLINE]**. A valid written objection must contain: (1) the objector’s full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number (Rolando Becerra v. Black Diamond Blade Company d/b/a Cutting Edge Supply Company, San Bernardino County Superior Court, Case No. CIVDS200062); (3) the factual and legal basis, with supporting documents, if any, on which the objection is based (4) whether the objector is represented by an attorney and the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. Any Class Member who fails to timely submit their written objections in the manner specified above may still appear and object at the Final Approval Hearing.

SUMMARY OF THE PROPOSED SETTLEMENT

Terms Of The Proposed Settlement

The parties reached a proposed settlement of the Lawsuit in the sum of \$500,000.00 (“Settlement Amount”), which is the settlement amount to be paid by Defendant. The attorneys for the Class (“Class Counsel”) will request the Court to award Attorneys’ Fees of up to one-third of the Settlement Amount (or \$166,650.00), and Litigation Costs and Expenses of up to \$15,000.00. The Parties have agreed to allocate \$28,000.00 to Plaintiff’s PAGA claim, whereby 75% will be paid to the California Labor & Workforce Development Agency (“LWDA”) from the Settlement Amount and the remaining 25% will be placed in the Net Settlement Amount for distribution to the Class to settle the claim for penalties under PAGA (“PAGA Payment”). Plaintiff will request that the Court award a Class Representative Payment to Plaintiff in the amount of \$10,000.00. The Settlement Administration Costs are not to exceed \$15,000.00. The Net Settlement Amount means the Settlement Amount minus the Court-approved Attorneys’ Fees, Litigation Costs and Expenses, Class Representative Payment, Settlement Administration Costs, and PAGA Payment. The Net Settlement Amount will be distributed to Participating Class Members based on the formula set forth below in the section titled “How Much Can I Expect To Receive?”

How Much Can I Expect To Receive?

The entire Net Settlement Amount will be distributed to Participating Class Members on a pro rata basis through payments called Individual Settlement Payments. Defendant will provide the Settlement Administrator with the number of weeks during the Class Period each Class Member worked as an hourly-paid non-exempt employee of Defendant in California (“Workweeks”) credited to each Class Member. The Settlement Administrator will then calculate the total number of Workweeks worked by all Class Members during the Class Period (“Total Workweeks”). To determine the estimated Individual Settlement Payment for each Class Member, the Settlement Administrator will (1) divide each Class Member’s Workweeks by the Total Workweeks and (2) multiply the resulting figure by the Net Settlement Amount. The Individual Settlement Payment will be reduced by the employee’s share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Payment.

How Can I Dispute The Number of Workweeks Allocated To Me?

The enclosed Notice of Settlement Award identifies the number of Workweeks Defendant’s records identify you worked during the Class Period. You are entitled to dispute the number of weeks worked that is reported in the Notice of Settlement Award. To submit a valid dispute, you must send a dated and signed letter stating you dispute the number of Workweeks, along with any supporting documentation, to the Settlement Administrator so that it is postmarked no later than [DATE]. A valid dispute must be in writing and contain: (1) your full name, current address, and signature; (2) the case name and number (Rolando Becerra v. Black Diamond Blade Company d/b/a Cutting Edge Supply Company, San Bernardino County Superior Court, Case No. CIVDS200062); and (3) a clear statement that explains the basis for your dispute and any supporting documents showing that the number of Workweeks credited to you is inaccurate. You may also fill out section 4 on the Notice of Settlement Award Form, and sign and date the form to submit your dispute. Any dispute that it is postmarked later than [DATE], will be late and invalid and will result in the Class Member being bound by the Workweeks stated in the Notice of Settlement Award. Defendant’s records will be presumed determinative, absent credible evidence to the contrary.

What Do I Give Up By Participating In The Settlement?

Those Class Members who do not submit timely and valid Requests for Exclusion to the Settlement Administrator (i.e. Participating Class Members), and their successors, assigns, and/or agents, upon the Effective Date or the date that Defendant delivers payment to the Settlement Administrator for the amount due under this Settlement, and by operation of the Final Approval Order, shall fully and finally release and discharge Defendant, and each of its past, present, and future parent companies, subsidiaries, and affiliates, and their respective shareholders, members, partners, representatives, fiduciaries, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, trustees, equity sponsors, joint employers, alter-egos, joint venturers, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendant, or any of them (collectively, the “Released Parties”), from the Released Claims, as defined herein. For purposes of the Settlement, the “Released Claims” include all claims, rights, demands, liabilities, and causes of action, whether in law or equity, arising from or related to the facts and/or claims alleged in this Action, and all claims that were asserted or could have been asserted in the Action based upon the claims and/or allegations in the Action, including but not limited to failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; wages related to rounding; meal periods and rest periods; payment for all hours worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records; unfair business practices based upon the allegations in the Action; declaratory relief based upon the allegations in the Action; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; interest; and attorneys’ fees and costs (“Class Released Claims”). To the extent that they arise from or are related to the facts and/or claims alleged in the Action, were alleged in the Action, or could have been alleged in the Action, based upon the claims and/or allegations asserted in the Action, the Class Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Sections 200, 201, 201.1, 201.3, 202, 203, 204, 206, 210, 216, 218, 218.5, 218.6, 221, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 256, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802, 2698 *et seq.*, and 2699 *et seq.*); the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004 (“PAGA”) to the extent alleged in the operative complaint or Plaintiff’s Notice letter to the LWDA or that could have been alleged based on the facts or claims alleged in the operative complaint and/or Plaintiff’s Notice letter to the LWDA; California Business and Professions Code Section 17200, *et seq.*; the California Civil Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR Sections 11010, 11040, and 11090; California Code of Civil Procedure, including but not limited to Section 1021.5; the California common law of contract; the FLSA, 29 U.S.C. Section 201, *et seq.*; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. Section 1001, *et seq.* (“ERISA”). This release excludes the release of claims not permitted by law.

The Participating Class Members, agree, upon the later of the Effective Date or the date that Defendant delivers payment to the Settlement Administrator for the amount due under this Settlement and by operation of the Final Approval Order, to release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Participating Class Members (including participation to any extent in any class or collective action), to obtain a recovery against any of the Released Parties for the Released Claims. Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) arising during the Class Period and reasonably related to any or all of the aforementioned claims. This release excludes the release of claims not permitted by law.

Final Approval Hearing

A hearing will be held in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third St., San Bernardino, CA 92415, on [REDACTED], 2020 at [REDACTED] a.m./p.m. to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Attorneys' Fees and Litigation Costs and Expenses for Class Counsel, Class Representative Payment for Plaintiff, PAGA Payment, and Settlement Administration Costs. The Final Approval Hearing may be moved to another date without further notice to the Class Members. It is your responsibility to monitor the Court's docket. It is not necessary for you to appear at this hearing. Notice of the final judgment will be posted on the Settlement Administrator's website at [REDACTED]. You are responsible for checking for the requirements currently in effect related to COVID-19 before appearing in person at the San Bernardino County Superior Court.

How To Access Other Documents And Filings In The Lawsuit

This Notice is a summary of the basic terms of the Settlement. For the precise terms of this settlement, consult the "Settlement Agreement," which is attached to the Declaration of H. Scott Leviant in Support Of Plaintiff's Motion for Preliminary Approval as Exhibit 1, which is on file with the Court. The Settlement Agreement, the pleadings and other records regarding the Lawsuit may be examined at any time during regular business hours at the San Bernardino County Superior Court, located at 247 West Third St., San Bernardino, CA 92415. Such documents are also available online by going to the following website: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Please note, there may be fees for accessing documents online.

For More Information

For more information, or if you have any questions, you may contact:

The Attorneys Representing the Parties

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The Settlement Administrator is ILYM Group, Inc.

The Settlement Administrator can be contacted at:

Becerra v. Black Diamond Blade Company
c/o ILYM Group, Inc.

<http://www.ilymgroup.com>

[ADDRESS]

[CITY, STATE, ZIP CODE]

[TELEPHONE]

[FASCIMILE]

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE.