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Attorneys for Plaintiff TAMARA WHITMER, in a Representative capacity, and on behalf of the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

TAMARA WHITMER, in a Representative
capacity, and on behalf of the proposed class

Plaintiff,

v.

USP MISSION HILLS, INC., a California
Corporation, and DOES 1-10, inclusive

Defendants

CASE NO. 20CHCV00209

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: January 12, 2022

Time: 8:30 am

Dept.: F49

Judge: Hon. Stephen P. Pfahler

Reservation Number 329318924911

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1 I, Eric K. Yaeckel , hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for Plaintiff TAMARA
4 WHITMER, in a Representative capacity only, and on behalf of other members of the general
5 public similarly situated in this matter.

6 2. I make this declaration in support of Unopposed Motion for Conditional Certification of
7 Settlement Class and Preliminary Approval of Good Faith Determination of Class Action
8 Settlement. I am personally familiar with the facts set forth in this declaration and I make this
9 declaration based on my personal knowledge. If called to testify, I could and would do so
10 competently.

11 **Background and Investigation**

12 3. On March 18, 2020, Plaintiff filed a representative action Complaint against USP Mission
13 Hills. The original Complaint alleged six causes of action, all under California's Private
14 Attorneys General Act ("PAGA") pursuant to Labor Code section 2698, et seq.: (1) Meal and
15 Rest Period Violations; (2) Minimum Wage Violations; (3) Overtime Violations; (4) Wage
16 Statement Violations; (5) Failure to Reimburse; and (6) Failure to Pay Wages Upon
17 Separation. (Yaeckel decl. ¶ 3; ROA # 1.)

18 4. On August 12, 2020, a First amended Complaint was filed which was amended to clarify
19 Defendant's specific violations as evidence became available to Plaintiff.

20 5. As part of the terms of settlement, the parties have stipulated to the filing of a Second
21 Amended complaint, which adds class action claims, based on the alleged violations of the
22 same Labor Code sections that were at issue in the original and First Amended Complaint.
23 Specifically, the Second Amended Complaint alleges violations of Labor Code §§ 201-203,
24 226, 226.7, 510, 512, 1197, 1198, 2802, and the IWC Wage Orders, and California's Business
25 and Professions Code.

26 6. On June 8, 2020, Plaintiff Whitmer propounded her first set of written discovery requests of
27
28

Defendant, including requests for admission, special interrogatories, requests for production of documents, and general and employment form interrogatories. Through these requests, Plaintiff sought, among other information and documents, the identities of putative class members, Defendant's compensation policies, employee handbooks, wage statements, payroll records, time records and reimbursement policies.

7. On February 8, 2021, our office filed a motion to compel discovery responses.

8. After a further meet and confer process, Defendant agreed to provide information and documents responsive to Plaintiff's requests. USP produced, *inter alia*, Plaintiff's time and wage records, a copy of the operative employee handbooks, copies of all other relevant employee policies, and the contents of Plaintiff's employee files. The parties also continued to discuss the production of a sampling of class member time and wage records data.

Settlement Efforts

9. On August 26, 2021, the parties attended a mediation before experienced "wage and hour" mediator Louis Marlin, Esq.. Following a full day of arms-length negotiations, the Parties both agreed to a mediator's proposal to resolve all potential claims against Defendant, including on an individual, representative and class-wide basis.

10. Prior to the mediation, Defendant produced a 25% of class member time and wage records, in addition to a detailed information about the parameters of the class and PAGA groups.

11. Both parties submitted detailed written submissions to the Mediator. Plaintiff's brief (shared with opposing counsel) contained a detailed explanation of the claims at issue, including all prosecution theories and the results of Plaintiff's counsel's analysis of the potential Class Members time and wage records.

12. Our office also interviewed numerous other putative class members during the course of the litigation.

13. The parties were able to reach a tentative agreement on the key terms of settlement at mediation. Negotiations over the final terms continued.

14. As of November 29, 2021 the parties finalized and executed a Joint Stipulation re: Class Action Settlement (the “Agreement”), which contains all of the parties’ agreed upon terms. A true and correct copy of the Agreement is attached as **Exhibit 1**.

15. Within the Memorandum, our office has provided the specific number of class members receiving a portion of the settlement, and the net settlement amount. The average recovery per class member was calculated as follows: **\$178,250** (net settlement amount after projected contingent costs) - **divided by 207** (number of class members) = **\$861.11**.

16. It was determined that this Settlement with a guaranteed payout now, was in the best interests of the class given Defendant’s posited defenses, and the likelihood of an appeal regardless of which party prevailed. The parties agree the Net Settlement Amount as set forth in the Agreement is fair, reasonable, and adequate

17. Each of the primary claims also had risks to obtaining both class certification and liability. If Defendants’ asserted defenses were successful, the class would not receive anything. Plaintiff maintains this recovery was significant in light of the circumstances of the case. As is set forth below, Plaintiff submits that the most realistic “best case” scenario would be an average recovery per class member of approximately \$1,815.54 and a worst case scenario would be a recovery of \$0, by way of denial of class certification of the class or a defense verdict.

Claims and Issue and Potential Liability

18. Plaintiff’s meal period claims were centered on USP’s time records and policies which Plaintiff alleged, showed violations of California Law. Defendants argue that even if there were late or missing meal periods shown on the time records, that USP had properly “provided” the opportunity for a meal period.

19. Plaintiff’s rest period claims alleged that USP’s policies restricted employees from taking rest periods, as employees were not allowed to leave the premises during breaks, and rest period premiums were not paid. Defendant argued that in practice no such “leave the premises” restriction was ever enforced, and was willing to provide witnesses to testify to such a

representation. Defendants also contend individualized inquiries will abound as to why individual employees may have failed to take appropriate rest periods.

20. Plaintiff's unpaid wages (and unpaid overtime) claims were centered around the fact that employees were performing unpaid work during meal and rest periods, and USP failed to accurately calculate the regular rate of pay and overtime by using an illegal rounding practice. Plaintiff alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed outside the scheduled hours. Defendants were defending these claims on the grounds that the lack of accurate start and end times did not necessarily evidence Labor Code violations, and that proving up these violations could necessitate individual inquiries, which could preclude class certification and make any PAGA claims unmanageable.

21. Plaintiff contends Defendants also violated Labor Code § 226 on multiple grounds in that it failed to provide accurate information on the Wage Statements provided to employees. However, Plaintiff acknowledges that these claims were largely derivative, in that both the gross and net wages would be inaccurate due to the above-referenced claims. Defendants argue that the failure to list gross and net wages are derivative of other claims that may ultimately fail and as a result there is no "knowing and intentional failure" to list information, which is what triggers liability under Labor Code § 226 (e).

22. Plaintiff contends Defendants violated Labor Code § 2802 by failing to reimburse its employees for, *inter alia*, cellular phone costs. Specifically, Plaintiff argued Defendants required employees to call in if they are to be absent or late, but are not reimbursed for such expenses. Plaintiff contends that California law requires reimbursement to these employees whenever a cell phone is used in such a manner. See e.g. *Cochran v. Schwan's Home Service, Inc.* (2014) Cal.App.4th 1137. Defendants argued that *Cochran* is distinguishable because the policy in this case does not require employees to use their cellular phones. Defendants also argue that individualized inquiries regarding the use of cellular phones would predominate and

bar class certification.

23. **Valuation of the Claims**

Meal Period Policy Violations: \$36.00 (average hourly rate) x 7,934 (total pay periods at issue between all class members) x 0.75 (estimated violations per pay period) = **\$214,218.**

Rest Period Policy Violations: \$36.00 (average hourly rate) x 7,934 (total pay periods at issue between all class members) x 0.67 (estimated violations per pay period) = **\$191,368.08.**

Minimum Wage & Overtime Violations: \$36.00 (average hourly rate) x 7,934 (total pay periods at issue between all class members) x .17 (estimated uncompensated hours per pay period) = **\$48,556.08**

Wage Statement Claims: 4,075 (pay periods at issue) x \$50 (statutory penalty) x .20 (estimated percentage of wage statements showing violations) = **\$40,750.**

Labor Code §2802 Penalties: 7,934 (total pay periods at issue between all class members) x \$5.00 (estimated reimbursement owed per pay period) = **\$39,670.**

“PAGA” Violations: 5 (separate Labor Code violations) x 4,075 (pay periods at issue) x \$100.00 (per violation per the statute) x .25 (violation rate) = **\$509,375.**

24. Based on the above, a best case recovery (which would be admittedly unlikely, given the factors set forth below) would be a total judgment for class action damages of \$1,043,937.10. However, given the likelihood of the Court ruling that no duplicative penalties can be recovered, our office would realistically discount the amount we are asking by approximately 15% to 626,363.26. This number would then be discounted approximately 40% (to \$375,817.95) to account for all contingent costs, including attorneys fees and all costs of administering the judgment. On this net amount, the "best case" scenario is that an average class member would recover approximately \$1,815.54. A worst case scenario is a recovery of \$0, by way of a denial of class certification or a defense verdict.

25. It is important to keep in mind that it is extremely unlikely that (1) Plaintiff could ever prevail on a maximum judgment and (2) that Defendant could fund a maximum judgment without

going bankrupt. Given all of the risks on each claim, our office submits the actual average recovery of \$861.11 is a reasonable compromise and is in the best interests of the class given all the risks of continued litigation.

26. As to the potential PAGA penalties, our office submits that this PAGA allocation is fair and reasonable. It was negotiated by a well respected mediator as a result of arms length negotiations. It is in line with percentages approved in other California Court's and takes into consideration that there is a significant risk any penalties awarded would be significantly mitigated.

27. The parties agreed to use Phoenix Class Action Administration Solutions ("Phoenix") as the "Settlement Claims Administrator" for the purposes of, inter alia, providing Notice forms to Settlement Class Members, issuing all payments pursuant to the Agreement, and to track all opt-outs and objections to the settlement. Phoenix's sole business has been the administration of class action settlements and class action notices, an area in which it has extensive experience.

28. Plaintiff executed a separate individual settlement agreement and release. This amount being paid to Plaintiff is separate and apart from the amount negotiated for the class. This individual package was separately negotiated with the assistance of the mediator and provides a much broader release of claims (and a resignation from her position with Defendant) in exchange for the consideration.

Other Terms and Factors Supporting Preliminary Approval

29. The \$5,000 enhancement award for Plaintiff was decided pursuant to good faith negotiations at, and following, mediation and thereafter and is intended to recognize that it was Plaintiff who initiated the lawsuit, initiated the PAGA claims, provided critical documents and witnesses to her attorneys, all in an effort to obtain moneys allegedly owed not only to herself, but to all other employees. Additionally, Plaintiff also could have been liable for a very large award of costs, should Defendant have prevailed in this action.

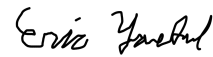
1 30. The parties have stipulated to add Class Action claims as Defendant had a desire to settle all
2 PAGA claims, as well as the underlying wage and statutory violations claims. (See Exhibit D).
3 However, if not for this settlement, any request by Plaintiff to certify a class would have been
4 heavily contested by Defendant. Therefore this class action settlement is a superior result for
5 both parties. In exchange for a full release, Class members are given a guaranteed monetary
6 recovery now. Defendant is also able to “buy the peace” and avoid the costs of defending all
7 future proceedings.

8 31. Our office has considerable experience in wage and hour and class action litigation. Trial
9 Attorney, William Sullivan has over 25 years of experience, 23 years of which has been
10 devoted to both prosecuting and defending class action litigation. I have over 10 years of
11 experience all of which have been dedicated to class action and representative action (PAGA)
12 litigation.

13 32. Based on our experience, we consider the Agreement to represent a fair, adequate and
14 reasonable settlement that is well within the accepted range of recoveries when compared to
15 similar wage and hour class actions.

16 33. Prior to preliminary approval, and a notice of settlement to the class, what can be said
17 of the reaction the class members is limited. However, Plaintiff's counsel has spoken
18 to a few Class Members prior to agreeing to the proposed settlement, and all were in
19 favor of the settlement.
20

21 I declare under penalty of perjury, under the laws of the State of California , that the foregoing
22 is true and correct. Executed on this 7th day of December, 2021.

23 

24 _____
25 ERIC K. YAECKEL
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EXHIBIT 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TAMARA WHITMER, individually, in a
Representative capacity, and on behalf of other
members of the general public similarly situated,

Plaintiff,

vs.

USP MISSION HILLS, INC., a California
Corporation, and DOES 1-10, inclusive,

Defendants.

Case No. 20CHCV00209

**JOINT STIPULATION RE: CLASS
ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable Stephen P. Pfahler, Dept. F49]

Action Filed: March 18, 2020
Trial Date: None

1 **TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL**
2 **OF RECORD:**

3 This Joint Stipulation re: Class Action Settlement (hereinafter, “Stipulation” or
4 “Settlement”) is made and entered into by and between plaintiff Tamara Whitmer (“Plaintiff”), on
5 behalf of herself and on behalf of others similarly situated; and defendant USP Mission Hills, Inc.
6 (“Defendant”), hereinafter collectively referred to as the “Parties.” Subject to the approval of the
7 Court, the matter of *Tamara Whitmer v. USP Mission Hills, Inc.*, Case No. 20CHCV00209 (the
8 “Action”), is hereby being compromised and settled pursuant to the terms and conditions set forth
9 in this Stipulation. Subject to the terms and conditions hereof and the approval of the Court, this
10 Settlement is intended to and shall be binding on, on the one hand, Defendant and its counsel, and
11 on the other hand, Plaintiff, the class she purports to represent, the State of California to the extent
12 Plaintiff is purporting to act as a proxy on behalf of the State, and Class Counsel.

13 **THE PARTIES STIPULATE AND AGREE** as follows:

14 **I. DEFINITIONS**

15 1. The following terms, as used throughout this Stipulation, are defined as follows:

16 a) Action. The term “Action” shall mean and refer to the legal action pending
17 in the Superior Court of California for the County of Los Angeles, Case No.
18 20CHCV00209, entitled *Tamara Whitmer v. USP Mission Hills, Inc.*

19 b) Check Cashing Deadline. The term “Check Cashing Deadline” shall mean
20 one hundred eighty (180) days after an Individual Settlement Award is issued to a Class
21 Member by check.

22 c) Class. The term “Class” shall mean and refer, collectively, to all Class
23 Members.

24 d) Class Counsel. The term “Class Counsel” shall refer to Sullivan & Yaeckel
25 Law Group, APC, located at 2330 Third Avenue, San Diego, California 92101, and all of
26 its lawyers, specifically including, but not limited to, William B. Sullivan and Eric K.
27 Yaeckel.

28 e) Class Members. The term “Class Members” shall mean: “All persons who

1 have worked for defendant USP Mission Hills, Inc. as non-exempt employees in the State
2 of California at any time during the Class Period.”

3 f) Class Period. The term “Class Period” shall mean the time period from
4 March 18, 2016 to the earlier of December 31, 2021 or the Preliminary Approval Date.

5 g) Class Representative. The term “Class Representative” shall mean and refer
6 to plaintiff Tamara Whitmer. The term “Class Representative” shall be synonymous with
7 the term “Plaintiff.”

8 h) Court. The term “Court” shall refer to the Honorable Stephen P. Pfahler of the
9 Superior Court of California for the County of Los Angeles, before whom the Action is
10 pending.

11 i) Defendant. The term “Defendant” shall mean and refer to USP Mission
12 Hills, Inc.

13 j) Defendant’s Counsel. The term “Defendant’s Counsel” shall refer,
14 collectively, to Evan R. Moses and Jennifer L. Katz of Ogletree, Deakins, Nash, Smoak &
15 Stewart, P.C., located at 400 South Hope Street, Suite 1200, Los Angeles, CA 90071.

16 k) Document Receipt Deadline. The term “Document Receipt Deadline” shall
17 mean thirty (30) days after the Notices are mailed to Class Members by the Settlement
18 Administrator.

19 l) Effective Date. The term “Effective Date” shall mean the date on which the
20 Court’s Judgment becomes final, as further detailed in Paragraph 8, herein.

21 m) Final Settlement Approval Hearing. The term “Final Settlement Approval
22 Hearing” shall mean and refer to a hearing before the Court to finally approve the
23 Settlement as fair, reasonable, and adequate, as further detailed in Paragraph 29, herein.

24 n) Final Settlement Papers. The term “Final Settlement Papers” shall refer to
25 and include a Motion for Final Approval of the Settlement, Motion for Attorneys’ Fees and
26 Costs, and [Proposed] Final Settlement Order.

27 o) Individual Settlement Award. The term “Individual Settlement Award” shall
28 mean a Class Member’s share of the Net Settlement Amount, as further detailed in

Paragraph 19, subparagraph (g), herein.

p) Net Settlement Amount. The term “Net Settlement Amount” shall mean and refer to the balance of the Total Class Action Settlement Amount, after all Court-approved deductions for attorneys’ fees and actual costs to Class Counsel, the settlement administration costs and fees, the Class Representative’s enhancement award, the employer’s share of payroll taxes on the wage portion of the settlement, and the State of California’s portion of the PAGA Allocation. The Net Settlement Amount is the maximum amount that will be available for distribution to Class Members.

q) Notice. The term “Notice” shall mean the Notice of Class Action Settlement, attached hereto as **Exhibit A**.

r) PAGA Allocation. “PAGA Allocation” means the amount of \$60,000.00 to be allocated to resolve the Class Members’ claims arising under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”) in settlement of alleged but disputed PAGA civil penalties. Pursuant to PAGA, 75 percent of the PAGA Allocation, or Forty-Five Thousand Dollars (\$45,000.00), shall be paid to the State of California Labor and Workforce Development Agency (the “LWDA”), with the remaining 25 percent, or Fifteen Thousand Dollars (\$15,000.00), allocated to the PAGA Members.

s) PAGA Members. The term “PAGA Members” means Class Members who were employed by Defendant as non-exempt employees in the State of California at any time during the PAGA Period.

t) PAGA Period. The term “PAGA Period” means the time period from January 6, 2019 to the earlier of December 31, 2021 or the Preliminary Approval Date.

u) Parties. The term “Parties” shall mean and refer collectively to plaintiff Tamara Whitmer, on behalf of the Class, and Defendant.

v) Plaintiff. The term “Plaintiff” shall mean and refer to plaintiff Tamara Whitmer. The term “Plaintiff” shall be synonymous with the term “Class Representative.”

w) Preliminary Approval Date. The term “Preliminary Approval Date” shall mean the date that the Court enters the Preliminary Approval Order, attached hereto as

1 **Exhibit B**, including any revisions required by the Court.

2 x) Released Parties. The term “Released Parties” shall mean and refer to
3 Defendant and all of Defendant’s current or former parent companies, subsidiary companies
4 and/or related companies, partnerships, joint ventures, and/or staffing agencies, and, with
5 respect to each of them, all of their and/or such related entities’ predecessors and
6 successors, and, with respect to each such entity, all of its past, present, and future
7 employees, officers, partners, principals, directors, stockholders, owners, representatives,
8 assigns, attorneys, agents, insurers, employee benefit programs (and the trustees,
9 administrators, fiduciaries, and insurers of such programs), and any other persons acting by,
10 through, under, or in concert with any of the persons or entities listed in this subsection, and
11 their successors.

12 y) Second Amended Complaint. The term “Second Amended Complaint” shall
13 mean and refer to the Second Amended Complaint to be filed to add Class claims, which is
14 attached hereto as **Exhibit D**.

15 z) Settlement Administrator. The term “Settlement Administrator” shall refer
16 to Phoenix Settlement Administrators, or any other third-party class action settlement
17 administrator agreed to by the Parties and approved by the Court for the purposes of
18 administering this Settlement.

19 aa) Stipulation. The term “Stipulation” shall refer to this document, entitled
20 “Joint Stipulation re: Class Action Settlement,” including all exhibits attached hereto.

21 bb) Total Class Action Settlement Amount. The term “Total Class Action
22 Settlement Amount” shall mean Three Hundred Seventy-Five Thousand Dollars
23 (\$375,000.00). This is the maximum possible amount that may be paid by Defendant to
24 resolve this Action, with the sole exception of an additional payment to Plaintiff in the
25 amount of \$25,000.00 in connection with her individual settlement and release agreement.
26 The Total Class Action Settlement Amount is a common fund, non-reversionary amount.

27 2. Date Of This Stipulation. This Stipulation is made as of the date set forth below by
28 and between Plaintiff, on behalf of herself and the Class, on the one hand, and Defendant, on the

other hand, subject to the approval of the Court.

II. BACKGROUND OF THE LEGAL ACTION

3. Brief Procedural History. Plaintiff filed the instant Action, entitled *Tamara Whitmer v. USP Mission Hills, Inc.*, in Los Angeles County Superior Court on March 18, 2020. In it, Plaintiff alleged causes of action for: (1) Meal and Rest Period Violations pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”); (2) Minimum Wage Violations pursuant to PAGA; (3) Overtime Violations pursuant to PAGA; (4) Wage Statement Violations pursuant to PAGA; (5) Failure to Reimburse pursuant to PAGA; and (6) Failure to Pay Wages Upon Separation pursuant to PAGA. The allegations in the Complaint were based on a PAGA letter to the California Labor and Workforce Development Agency dated January 6, 2020. After meeting and conferring about Plaintiff’s allegations in the Complaint, Plaintiff filed and served a First Amended Complaint on or about August 12, 2020, alleging the same causes of action included in the original Complaint. On September 15, 2020, Defendant filed an Answer to Plaintiff’s First Amended Complaint. Defendant generally denies Plaintiff’s claims, including the allegations in the Complaint and First Amended Complaint, as well as the allegations in the soon-to-be-filed Second Amended Complaint.

4. Mediation And Settlement Agreement Reached By The Parties. On August 26, 2021, the Parties and their counsel participated in a formal mediation session remotely via Zoom before Mr. Louis Marlin, Esq. At the conclusion of the August 26, 2021 mediation session, the Parties, by and through their counsel, reached an agreement to resolve the Action on a class-wide basis pursuant to terms set forth in a Memorandum of Understanding. This Stipulation formalizes the Settlement agreement reached by the Parties.

5. Investigation. The Parties have conducted a detailed and comprehensive investigation of the claims asserted against Defendant and of the applicable law. The Parties engaged in informal discovery to prepare for mediation, which included: (a) analysis by the Parties of certain records, data, and policies pertaining to Plaintiff, Class Members, and the claims asserted in the Action; (b) research of the law applicable to Plaintiff’s claims and Defendant’s affirmative defenses, as well as the damages alleged by Plaintiff; (c) exchange, examination, and analysis of

1 information and documents relating to Defendant's formal policies and Plaintiff's claims for wage
2 and hour violations; and (d) consideration of information disclosed at and in connection with
3 mediation.

4 6. Benefits Of Settlement. The Class Representative and Class Counsel recognize the
5 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
6 such litigation. The Class Representative and Class Counsel also are aware of the burdens of proof
7 necessary to establish liability for the claims asserted in the Action, the defenses thereto, and the
8 difficulties inherent in the Action. Based on the foregoing, the Class Representative and Class
9 Counsel have determined that the Settlement set forth in this Stipulation is a fair, adequate, and
10 reasonable settlement, and that it is in the best interest of the Class Members. Based on their
11 discovery and investigation, Class Counsel has determined that the Settlement is well within the
12 range of reasonableness. The settlement embodied and documented in this Stipulation is the
13 product of extensive, arms-length negotiations, and is not the product of collusion. Likewise,
14 Defendant has concluded that any further defense of this Action would be protracted and
15 expensive. Substantial amounts of time, energy, and resources have been, and will continue to be,
16 devoted to the defense of the Action unless this Settlement is made. Therefore, Defendant has
17 agreed to settle, in the manner and upon the terms set forth in this Stipulation, in order to fully and
18 finally resolve the claims asserted in the Action.

19 7. Denial Of Wrongdoing. Defendant has denied and continues to deny each of the
20 claims asserted by Plaintiff in this Action, as referenced in Paragraph 3, above, and which will be
21 included in the Second Amended Complaint. Defendant has asserted and continues to assert
22 defenses to the Class Representative's claims, and has expressly denied and continues to deny any
23 wrongdoing whatsoever. Neither this Stipulation nor any action taken to carry out the Settlement
24 may be construed as an admission by Defendant of any fault, wrongdoing, or liability whatsoever.

25 **III. DATE OF SETTLEMENT**

26 8. Effective Date. The Court's Judgment shall become final when all of the following
27 events have occurred:

- 28 a) The Stipulation has been executed by all Parties, Class Counsel, and

Defendant's Counsel;

b) The Court has given preliminary approval to the Settlement; and

c) The Court has held a Final Settlement Approval Hearing and has entered a Final Order and Judgment, dismissing the Action with prejudice, and approving the Stipulation.

It is the Parties' intention that the Settlement shall be final for purposes of the Effective Date at the time of entry of the Final Order and Judgment, if no objections to the Settlement are filed. Only in the event that written objections are filed prior to the Final Settlement Approval Hearing that are not later withdrawn prior to final approval, the Effective Date shall be the later of:

- The date of final affirmance on an appeal of the Judgment; the expiration of the time for a petition to review the Judgment; and, if review is granted, the date of final affirmance of the Judgment following review; or

- The date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or

- If no appeal is filed, the expiration date for filing any appeal from the Judgment.

IV. CLASS MEMBERS INCLUDED IN SETTLEMENT

9. Scope Of The Class. The Class is defined as follows: "All persons who have worked for defendant USP Mission Hills, Inc. as non-exempt employees in the State of California at any time during the Class Period."

10. Class Members' Objections To This Settlement. Any Class Member may object to the Settlement by filing a written objection with the Court and serving the written objection on counsel for the Parties on or before the Document Receipt Deadline, at the addresses detailed in Paragraph 45, below. Any Class Member who does not object to the Settlement in the manner provided for in this Stipulation may not appeal the Final Judgment. In the event that the Court approves this Settlement notwithstanding the objections of any Class Members, Class Members who object to the Settlement will nonetheless be bound by the Settlement. Class Members who have opted out of the Settlement as detailed in Paragraph 21, subparagraph (d), herein do not have

standing to object to the Settlement or to file an appeal for purposes of Paragraph 8. The Parties, Class Counsel, and Defendant's Counsel agree not to take any action or make any statements to encourage any Class Members to object to the Settlement.

11. Class Members' Exclusion ("Opt-Out") From This Settlement. Any Class Member may request to be excluded ("opt-out") from this Settlement by mailing a written Request for Exclusion to the Settlement Administrator as prescribed in Paragraph 21, subparagraph (d), herein. Each Class Member who submits a valid Request for Exclusion shall not be bound by the Settlement. However, PAGA Members may not opt-out of the portion of the Settlement relating to the settlement of claims under PAGA. Even if a PAGA Member opts-out, they will still receive an Individual PAGA Payment. PAGA Members will be bound by the PAGA portion of the release whether or not they cash this check before it becomes void. PAGA Members who submit valid Requests for Exclusion as to the class action portion of the Settlement will only be bound by the release of the PAGA claims. The Parties, Class Counsel, and Defendant's Counsel agree not to take any action or make any statements to encourage any Class Members to opt out of the Settlement.

12. Blow-Up Provision. Defendant reserves the right to revoke this Stipulation and the Settlement provided for herein if more than ten percent (10%) of Class Members opt out of the Settlement by submitting timely and valid Requests for Exclusion in the manner set forth in Paragraph 21, subparagraph (d), below, in which case this Stipulation will not have any force and/or effect. Class Counsel and the Class Representative agree not to oppose any application by Defendant and/or its Counsel that is consistent with this paragraph. Defendant shall make its election within seven (7) calendar days of receipt from the Settlement Administrator of the total percentage of opt-outs. If the Settlement is voided, no payment will be made by Defendant to Plaintiff, any Class Member, or Class Counsel in connection with this Stipulation; and all Parties and third parties referenced in this Stipulation will bear their own costs, fees, and expenses associated with the Litigation. However, Defendant will be responsible for the costs incurred by the Settlement Administrator.

13. Escalator Clause. Defendant represents that, as of August 26, 2021, there were

1 approximately 207 Class Members. If, as of the end date of the Class Period, the number of Class
2 Members is greater than 237, Defendant shall, at its sole discretion, have the option of either (a)
3 increasing the Net Settlement Amount proportionally for each Class Member over 237; or (b)
4 changing the end date of the Class Period to October 26, 2021.

5 14. Finality Of Settlement. As of the Effective Date, the Settlement contained herein,
6 including the Release outlined below, shall be final and binding upon all Class Members who do
7 not exclude themselves from the Settlement.

8 **V. RELEASES**

9 15. Release Of Class Claims By Plaintiff And Class Members. As of the date of final
10 approval of this Stipulation, Plaintiff and Class Members (including the Class Representative)
11 release the Released Parties from the following, collectively referred to as the “Released Class
12 Claims”:

13 Any and all claims, actions, demands, causes of action, suits, debts, obligations,
14 damages, rights or liabilities that have been asserted by Plaintiff, or the Class
15 Members or any of their respective heirs, executors, administrators, beneficiaries,
16 predecessors, successors, attorneys, assigns, agents, and/or representatives arising
17 out of any claims that were encompassed in the Action, and any claims which
18 reasonably flow from the facts alleged in Plaintiff’s Complaint, First Amended
19 Complaint, or Second Amended Complaint, including, but not limited to: claims for
20 unpaid wages (including claims for minimum wage, regular wages, and overtime
21 compensation), meal and rest periods, failure to pay or calculate proper meal and
22 rest period premiums (including claims for failure to pay premiums and failure to
23 pay premiums at the correct rate of pay), unreimbursed business expenses, interest,
24 penalties (including waiting time penalties pursuant to Labor Code sections 203 and
25 204, pay stub penalties pursuant to Labor Code section 226, recordkeeping penalties
26 pursuant to Labor Code section 1174, and civil penalties pursuant to the Labor Code
27 Private Attorneys General Act of 2004 (Labor Code sections 2698, *et seq.*)
28 (“PAGA”)), claims pursuant to all of the theories of relief described above,

1 including but not limited to penalties relating to alleged violations of Labor Code
2 sections 200, 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1194,
3 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802, the Industrial Welfare
4 Commission Wage Orders relating to claims for unpaid hours worked, meal periods
5 and rest breaks, provision and maintenance of tools and equipment, and
6 recordkeeping, and claims under Business and Professions Code sections 17200, *et*
7 *seq.*, claims for attorneys' fees and costs, conversion, fraud, common count, and
8 unfair business practices. Released Class Claims include all claimed or unclaimed
9 compensatory, consequential, incidental, liquidated, punitive and exemplary
10 damages, restitution, interest, costs and fees, injunctive or equitable relief, and any
11 other remedies available at law or equity (including, to the extent permitted by law
12 the FLSA), allegedly owed or available to the Class arising or reasonably flowing
13 from the allegations contained in the Complaint, First Amended Complaint, and/or
14 Second Amended Complaint against the Released Parties for the time period from
15 the beginning of time up to and including the earlier of December 31, 2021 or the
16 Preliminary Approval Date.

17 The *res judicata* effect of the Judgment will be the same as that of the Release.

18 16. Limited General Release By Class Members. All Class Members who do not opt out
19 of the Settlement will be bound by a limited waiver of California Civil Code section 1542 ("Section
20 1542"), which provides: "*A general release does not extend to claims that the creditor or*
21 *releasing party does not know or suspect to exist in his or her favor at the time of executing the*
22 *release and that, if known by him or her, would have materially affected his or her settlement with*
23 *the debtor or released party.*" The limited Section 1542 release described in this paragraph
24 releases all claims by Class Members against the Released Parties, whether known or unknown,
25 within the definition of "Released Class Claims" (as defined in Paragraph 15, above), irrespective of
26 the factual or legal basis for such claims. However, to be clear, the scope of the Section 1542
27 waiver is limited to the Released Class Claims. The Parties understand and specifically agree that
28 the limited Section 1542 waiver described above: (a) is a material part of the consideration for this

1 Agreement; (b) was critical in justifying the agreed upon economic value of this Settlement, and
2 without it Defendant would not have agreed to the consideration provided; and (c) is narrowly
3 drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution
4 of claims that were or could have been alleged based on the facts and legal theories contained in
5 Plaintiff's Complaint, First Amended Complaint, and Second Amended Complaint.

6 17. General Release By The Class Representative. In addition to the release set forth in
7 the above Paragraph 15, the Class Representative makes the additional general release of all of her
8 individual claims as follows: The Class Representative releases the Released Parties from any and
9 all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights, or
10 liabilities of any nature and description whatsoever, known or unknown, that the Class
11 Representative individually may possess against the Released Parties arising from the Class
12 Representative's employment with Defendant. The Class Representative hereby acknowledges
13 that, upon receiving the sums provided to her pursuant to this Stipulation and her individual
14 settlement and release agreement, she will have received all potential wages, damages, and
15 penalties owing to her by Defendant, and, further, that she is not owed any additional wages,
16 penalties, or damages from Defendant.

17 The Class Representative also agrees to expressly and fully waive the provisions of
18 California Civil Code section 1542, which provides as follows:

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

23 The Class Representative's general release shall cover the time period from March 18, 2016 up to
24 the Effective Date.

25 **VI. AMOUNT AND DISTRIBUTION OF SETTLEMENT**

26 18. Settlement Amount. The Total Class Action Settlement Amount shall be Three
27 Hundred Seventy-Five Thousand Dollars (\$375,000.00). Defendant will pay the Total Class
28 Action Settlement Amount within twenty-one (21) calendar days following the Effective Date by

wiring that amount to the Settlement Administrator. With the limited exception of Defendant's agreement to pay Plaintiff an additional \$25,000.00 in connection with Plaintiff's separate individual settlement agreement and release, under no circumstances will Defendant be obligated to pay more than the amount of \$375,000.00 as a result of this Settlement.

19. Deductions From Settlement Amount. Deductions from the Total Class Action Settlement Amount, all subject to Court approval, shall be made for:

a) Attorneys' Fees. Class Counsel may apply for an award of attorneys' fees, not to exceed one-third (33⅓ percent) of the Total Class Action Settlement Amount, or One Hundred Twenty Five Thousand Dollars and Zero Cents (\$125,000.00). The attorneys' fees award shall be paid from the Total Class Action Settlement Amount. The amount of attorneys' fees shall include all past and future attorneys' fees to Class Counsel – including, without limitation, all time expended by Class Counsel in defending the Settlement and securing final approval of the Settlement (including any appeals thereof). Defendant agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an attorneys' fees award. Even in the event that the Court reduces or does not approve the requested attorneys' fees award, Plaintiff and Class Counsel shall not have the right to revoke this Stipulation or this Settlement, and it will remain binding. Plaintiff and Class Counsel agree not to file an appeal from any order by the Court reducing or not approving the requested attorneys' fee award.

b) Attorneys' Costs. In addition to attorneys' fees, Class Counsel may apply for an award of costs, not to exceed the sum of Fifteen Thousand Dollars (\$15,000.00). The costs award shall be paid from the Total Class Action Settlement Amount. The amount of costs shall include all past and future costs associated with this Action – including, without limitation, all costs expended by Class Counsel in defending the Settlement and securing final approval of the Settlement (including any appeals thereof). Defendant agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an

attorneys' costs award. Even in the event that the Court reduces or does not approve the requested attorneys' costs award, Plaintiff and Class Counsel shall not have the right to revoke this Stipulation or this Settlement, and it will remain binding. Plaintiff and Class Counsel agree not to file an appeal from any order by the Court reducing or not approving the requested attorneys' cost award.

c) Class Representative's Enhancement Award. Class Counsel may apply for an enhancement award to the Class Representative in an amount not to exceed Five Thousand Dollars (\$5,000.00). The enhancement award shall be paid from the Total Class Action Settlement Amount. Defendant agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an enhancement payment. Even in the event that the Court reduces or does not approve the requested enhancement payment, Plaintiff and Class Counsel shall not have the right to revoke this Stipulation or this Settlement, and it will remain binding. Plaintiff and Class Counsel agree not to file an appeal from any order by the Court reducing or not approving the requested enhancement award.

d) Settlement Administration Costs And Fees. All actual costs for settlement administration, including related accounting costs, in an amount not to exceed Six Thousand Seven Hundred Fifty Dollars (\$6,750.00), shall be paid from the Total Class Action Settlement Amount. The Parties contemplate that the Settlement Administrator shall be Phoenix Settlement Administrators, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. To the extent actual costs for settlement administration are less than \$6,750.00, those amounts will be credited to the Total Class Action Settlement Amount prior to distribution of the Net Settlement Amount to Class Members. Defendant agrees not to oppose any such applications which are consistent with this paragraph. Plaintiff and Class Counsel agree not to file an appeal from any order by the Court reducing or not approving the requested settlement administration costs.

e) PAGA Allocation. The Parties agree to allocate Sixty Thousand Dollars

1 (\$60,000.00) of the Total Class Action Settlement Amount to resolve the Class Members'
2 claims arising under PAGA. Pursuant to PAGA, 75 percent of the PAGA Allocation, or
3 Forty-Five Thousand Dollars (\$45,000.00), shall be paid to the State of California Labor
4 and Workforce Development Agency (the "LWDA"), with the remaining 25 percent, or
5 Fifteen Thousand Dollars (\$15,000.00), allocated to PAGA Members in accordance with
6 the calculation provisions in Paragraph 19, subparagraph (g), below. Plaintiff and Class
7 Counsel agree not to file an appeal from any order by the Court changing or not approving
8 the requested PAGA allocation.

9 f) Employer's Share Of Payroll Taxes. The Parties agree that the employer's
10 share of payroll taxes, as calculated by the Settlement Administrator pursuant to Paragraph
11 21, subparagraph (h), below, shall be paid from, and not in addition to, the Total Class
12 Action Settlement Amount.

13 g) Payment Of Individual Settlement Awards To Class Members. After the
14 amounts described in Paragraph 19, subparagraphs (a) through (f), above, have been
15 deducted from the Total Class Action Settlement Amount, the remainder – the Net
16 Settlement Amount – shall be distributed to each Class Member, in the following manner:

17 The Net Settlement Amount shall be divided by the number of aggregate qualified
18 weeks worked by all Class Members during the Class Period to produce a "Weekly
19 Settlement Value." A "qualified week" shall be a week worked by a Class Member
20 in California in a non-exempt role. Each Class Member shall be eligible to receive a
21 settlement payment in the amount of the total number of qualified weeks the Class
22 Member worked for Defendant in California during the Class Period in a non-
23 exempt role multiplied by the Weekly Settlement Value, less applicable
24 withholdings, provided that the Class Member has not submitted a Request for
25 Exclusion.

26 20. Non-Reversionary Settlement. There will be no reversion to Defendant following
27 the settlement process. In the event that an Individual Settlement Award is paid to a Class Member
28 by check and the check is not cashed on or before the Check Cashing Deadline, the amount of the

Individual Settlement Award shall be considered unclaimed. Each unclaimed Individual Settlement Award paid to a Class Member but not cashed on or before the Check Cashing Deadline shall be tendered to the State of California Unclaimed Property Fund in the Class Member's name.

VII. SETTLEMENT ADMINISTRATION

21. Settlement Administrator's Duties. The Settlement Administrator shall be responsible for (a) processing the data provided by Defendant to be used in calculating Individual Settlement Awards; (b) preparing, printing, and mailing to Class Members the Notice (attached hereto as **Exhibit A**), as well as following up with reasonable skip tracing; (c) notifying the Parties of the identity of Class Members who submit timely Requests for Exclusion; (d) calculating and mailing Individual Settlement Awards to Class Members; (e) calculating and paying the employer's share of the applicable federal and state withholding taxes; (f) filing any required federal and state tax forms and related agency reporting; (g) filing any required reports with the Court; and (h) any and all such other tasks as to which the Parties mutually agree, or which the Court orders the Settlement Administrator to perform. The settlement administration process shall be anonymous to the extent possible.

Specifically, the Settlement Administrator shall perform the following duties:

a) Processing Of Data Provided By Defendant Regarding Class Members.

Upon receipt of the data provided by Defendant pursuant to Paragraph 26 herein, the Settlement Administrator shall determine, for each Class Member: (i) the Class Member's name, (ii) the Class Member's last known address, (iii) the last four digits of the Class Member's social security number, and (iv) the Weekly Settlement Value to be paid to the Class Member pursuant to Paragraph 19, subparagraph (g), above.

b) Mailing Of Documents. Within ten (10) calendar days of receipt of the database containing the information to be provided by Defendant pursuant to Paragraph 26 herein, the Settlement Administrator shall mail a copy of the Notice to all Class Members by first class regular U.S. Mail, using the most current mailing address information provided by Defendant and/or obtained by the Settlement Administrator. The Settlement Administrator will engage in address searches consistent with its normal practices in

1 administering settlements of wage claims, including skip tracing. Such search efforts shall
2 include, where necessary, using social security numbers to obtain better address
3 information and attempting to call such Class Members. Any returned envelopes from this
4 mailing with forwarding addresses will be utilized by the Settlement Administrator to
5 forward the Notices to the Class Members.

6 c) Re-Mailing Of Returned Notices. Notices returned to the Settlement
7 Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the
8 returned envelope. A returned Notice will be forwarded only once per Class Member by
9 the Settlement Administrator. Upon completion of these steps by the Settlement
10 Administrator, the Parties shall be deemed to have satisfied their obligation to provide the
11 Notice to the affected Class Member. The affected Class Member shall remain a Class
12 Member and shall be bound by all the terms of this Stipulation and the Court's Final Order
13 and Judgment.

14 d) Processing Requests For Exclusion ("Opt-Outs") From Settlement. In the
15 event that a Class Member requests to be excluded ("opts out") from the Settlement
16 provided herein, he or she must mail a written Request for Exclusion to the Settlement
17 Administrator by first class U.S. Mail, or equivalent, postage paid and postmarked, by no
18 later than the Document Receipt Deadline, which is thirty (30) calendar days after the date
19 that the Settlement Administrator originally mails Notices to Class Members. To be valid,
20 the written Request for Exclusion must include (i) the Class Member's name, (ii) the Class
21 Member's address, (iii) a request for exclusion, and (iv) the Class Member's signature. The
22 Settlement Administrator shall notify Class Counsel and Defendant's Counsel of its receipt
23 of all valid Requests for Exclusion within three (3) business days after having received each
24 such Request for Exclusion.

25 e) Payment Of Individual Settlement Awards. The Settlement Administrator
26 shall be solely responsible for the disbursement of the Individual Settlement Award
27 payments.

28 f) Declaration Of Due Diligence. No later than ten (10) calendar days prior to

1 the Final Settlement Approval Hearing, the Settlement Administrator shall provide both
2 Parties with a declaration of due diligence to be filed with the Court.

3 g) Allocating Portions Of The Individual Settlement Awards As Wages. The
4 Settlement Administrator shall be responsible for calculating the portion of each Individual
5 Settlement Award to be allocated as wages. Thirty-three percent (33%) of each Individual
6 Settlement Award shall be allocated as wages, and sixty-seven percent (67%) of each
7 Individual Settlement Award shall be allocated as interest and penalties.

8 h) Taxation Of Individual Settlement Awards. The Settlement Administrator
9 shall be responsible for paying the employer's and employees' share of federal, state, and
10 local payroll and income taxes. The portion of each Individual Settlement Award allocated
11 as wages shall be subject to payroll withholding. The employer's share of payroll taxes
12 shall be paid from the Total Class Action Settlement Amount, pursuant to Paragraph 19,
13 subparagraph (f), above. Appropriate withholding of the employee's share of income taxes
14 shall be deducted from each Individual Settlement Award.

15 i. Federal Tax Reporting. The Settlement Administrator shall issue an IRS
16 Form W-2 to each Class Member for the portion of the Individual Settlement
17 Award that is designated as wages. The Settlement Administrator shall issue
18 an IRS Form 1099 to each Class Member for the portion of the Individual
19 Settlement Awards that is not designated as wages. The Settlement
20 Administrator shall issue an IRS Form 1099 to the Class Representative for
21 any enhancement award paid pursuant to Paragraph 19, subparagraph (c),
22 above, in connection with her role as the Class Representative.

23 ii. State Tax Reporting. The Settlement Administrator shall file, with the
24 California Employment Development Department ("EDD"), the required
25 reports of Personal Income Tax ("PIT") wages withheld from the Individual
26 Settlement Awards, as well as the amounts to be paid as Unemployment
27 Insurance ("UI"), Employment Training Tax ("ETT"), and State Disability
28 Insurance ("SDI"). For purposes of this reporting, prior to disbursement of

1 the Individual Settlement Awards, the Settlement Administrator shall
2 provide Defendant with a list of all Class Members, and Defendant shall
3 provide to the Settlement Administrator the following information: (1) its
4 Form DE 2088, *Notice of Contribution Rates and Statement of UI Account*,
5 for the current calendar year (if unavailable, Defendant may provide instead
6 their California State Employer's Identification Number and its applicable
7 UI and ETT Rates); and (2) the year-to-date earnings of each Class Member
8 who received any wages from Defendant during the current calendar year.

9 iii. Responsibility For Tax Obligations. All Class Members and the Class
10 Representative will be responsible for correctly characterizing the
11 compensation they receive for tax purposes and for paying any taxes on the
12 amounts received, except for the employer contributions which will be
13 handled as provided by this Stipulation. The Class Members and the Class
14 Representative agree to indemnify Defendant for any liability Defendant
15 incurs to any tax authority on account of the Class Members' or the Class
16 Representative's failures to pay all taxes due on amounts they receive
17 hereunder, except if the failure results from Defendant's failure to pay its
18 own portion of taxes due. The liability of each Class Member and each
19 Class Representative is limited to the liability caused by that individual's
20 own failure.

21 i) Mailing Of Individual Settlement Awards. Within ten (10) calendar days
22 after Defendant's transfer of funds to the Settlement Administrator, the Settlement
23 Administrator shall mail all Class Members their Individual Settlement Awards. Each
24 check issued to a Class Member shall remain valid and negotiable for one hundred eighty
25 (180) days from the date of issuance. Those Individual Settlement Awards not cashed by
26 the Check Cashing Deadline shall be canceled automatically, in which event the Class
27 Member's claim will be deemed void and the unclaimed funds shall be sent to the State of
28 California Unclaimed Property Fund in the Class Member's name.

j) Certifying The Class Members Bound By The Settlement. Within fifty (50) calendar days from the Effective Date, the Settlement Administrator shall file written certification with the Court with copies to counsel for all Parties that all Class Members have been mailed their Individual Settlement Awards.

k) Payments To Class Counsel. Within ten (10) calendar days after Defendant's transfer of funds to the Settlement Administrator, the Settlement Administrator shall pay the attorneys' fees and costs, as detailed in Paragraph 19, subparagraphs (a) and (b), above.

l) Payment Of PAGA Allocation. Within ten (10) calendar days after Defendant's transfer of funds to the Settlement Administrator, the Settlement Administrator shall mail to the LWDA the State of California's allocated portion of the Court-approved PAGA Allocation, as detailed in Paragraph 19, subparagraph (e), above.

22. Disputes Regarding The Settlement Administrator's Performance Of Duties. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Stipulation until all payments and obligations contemplated by this Stipulation have been fully carried out.

VIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL

23. Submission Of Stipulation To Court. Plaintiff shall promptly submit this Stipulation to the Court in support of Plaintiff's motion for preliminary approval and determination by the Court as to the fairness, adequacy, and reasonableness of this Stipulation, and shall apply to the Court for the entry of an order substantially in the following form:

a) Scheduling a fairness hearing on the question of whether the proposed Settlement – including payment of attorneys' fees, attorneys' costs, appointment of the Class Representative and the amount of her enhancement award, and the method of determining Individual Settlement Awards to be paid to Class Members – should be finally approved as fair, reasonable, and adequate as to the Class;

b) Approving as to form and content the proposed Notice (attached as **Exhibit**

1 A);

2 c) Directing the mailing to Class Members of the Notice, by first class U.S.
3 Mail, pursuant to the terms specified herein;

4 d) Preliminarily approving the Settlement, subject only to the objections of
5 Class Members and final review by the Court; and

6 e) Enjoining the Class Representative and all Class Members from filing or
7 prosecuting any claims, suits, or administrative proceedings (including filing claims with
8 the California Division of Labor Standards Enforcement) regarding claims released by the
9 Settlement unless such individuals have submitted valid Requests for Exclusion to the
10 Settlement Administrator.

11 Class Counsel must submit the motion for preliminary approval and all supporting documents to
12 Defendant's Counsel, for Defendant's review and comment, no later than five (5) business days
13 prior to filing. The [Proposed] Preliminary Approval Order to be submitted to the Court shall be
14 the document attached hereto as **Exhibit B**, unless the Court's orders during the approval process
15 require revisions to be made. Unless the Parties agree otherwise, only necessary revisions shall be
16 made to the [Proposed] Preliminary Approval Order to be submitted to the Court.

17 24. Amendment Of This Stipulation To Conform To The Court's Order. To the extent
18 the Court does not approve this Stipulation, or any term contained herein, and instead allows the
19 Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the
20 Stipulation in accordance with the Court's direction, and to retain all other terms of the Stipulation
21 that the Court approves.

22 **IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

23 25. Timely Approval Of Documents To Be Mailed By The Settlement Administrator.
24 Counsel for the Parties shall respond to requests by the Settlement Administrator to approve all
25 settlement administration documents, including the Notice to be mailed to the Class, within four (4)
26 business days of the Settlement Administrator's request for approval.

27 26. Defendant's Provision Of Class Member Data To Settlement Administrator. No
28 later than thirty (30) calendar days following preliminary approval of this Settlement by the Court,

1 Defendant shall provide the Settlement Administrator with data that is within Defendant's
2 possession containing, for each Class Member: (a) the Class Member's name; (b) the Class
3 Member's last known address; (c) the Class Member's social security number; (d) the total number
4 of "qualified weeks" during which the Class Member was employed by Defendant in California in
5 a non-exempt role during the Class Period; and (e) the total number of "qualified weeks" during
6 which the Class Member was employed by Defendant in California in a non-exempt role during the
7 PAGA Period, if any. This Class information is confidential and not to be disclosed to anyone
8 other than the Settlement Administrator. This information shall be based on Defendant's payroll
9 and other business records, and shall be in a format readily accessible to Defendant. Within ten
10 (10) calendar days of receipt of the information from Defendant, the Settlement Administrator will
11 mail the Notice to the Class Members, provided that counsel for the Parties have approved the
12 documents pursuant to Paragraph 25 herein. In the event that approval of the documents pursuant
13 to Paragraph 25 takes more than ten (10) calendar days, the Settlement Administrator shall mail the
14 Notice to the Class Members within one (1) business day of receiving approval of the documents
15 pursuant to Paragraph 25.

16 27. Disputes Arising From Settlement Administration. Any disputes arising during the
17 settlement administration process must be resolved informally by counsel for the Parties and, if the
18 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days of the
19 Document Receipt Deadline.

20 28. Motions By Class Counsel.

21 a) Motions Required For Final Approval Of The Settlement. Class Counsel
22 shall timely prepare, subject to Defendant's review and right to comment, Final Settlement
23 Papers in conformance with the terms of this Settlement, including (1) a motion for final
24 approval of the Settlement; (2) a motion for award of attorneys' fees and costs; (3) a motion
25 for the Class Representative's enhancement award; (4) the [Proposed] Final Settlement
26 Order; and (5) any other documents, petitions, or motions required to effectuate this
27 Settlement – including, but not limited to, any additional proposed orders requested by the
28 Court. Class Counsel must submit the Final Settlement Papers to Defendant's Counsel, for

1 Defendant's review and comment, no later than five (5) business days prior to filing the
2 motion for final approval of the Settlement. In the event that Class Counsel and
3 Defendant's Counsel cannot resolve any dispute regarding the Final Settlement Papers
4 arising from Defendant's right to review and comment, Defendant's Counsel shall submit
5 its objections to the Final Settlement Papers to the Court before or during the Final
6 Settlement Approval Hearing.

7 b) [Proposed] Final Settlement Order. The [Proposed] Final Settlement Order
8 shall include a proposed Final Order and Judgment ordering:

- 9 i. Approval of the Settlement, adjudging the terms thereof to be fair,
10 reasonable, and adequate, and directing consummation of its terms and
11 provisions;
- 12 ii. Approval of Class Counsel's application for an award of attorneys' fees and
13 costs (Class Counsel will separately submit a motion for award of attorneys'
14 fees and costs);
- 15 iii. Approval of the enhancement award to the Class Representative;
- 16 iv. Approval of the proposed Second Amended Complaint, attached hereto as
17 **Exhibit D**, adding Class claims against Defendant for meal period
18 violations, rest period violations, minimum wage violations, overtime
19 violations, wage statement violations, failure to reimburse, failure to pay
20 wages upon termination, and unfair business practices, and deeming it filed
21 as of the date of Preliminary Approval of the Settlement;
- 22 v. Dismissal of the Action with prejudice and permanently barring and
23 enjoining the Class Representative and all Class Members from prosecuting
24 against the Released Parties any claims released herein pursuant to
25 Paragraphs 15 through 17, above, including any Released Class Claims and
26 any claims covered by a limited and/or general release, upon satisfaction of
27 all payments and obligations hereunder; and
- 28 vi. Reserving jurisdiction over the construction, interpretation, implementation,

1 and enforcement of the Parties' Settlement, and over the administration and
2 distribution of the Settlement amounts.

3 The [Proposed] Final Approval Order and Judgment to be submitted shall be the document
4 attached hereto as **Exhibit C**, unless the Court's orders during the approval process require
5 revisions to be made. Unless the Parties agree otherwise, only necessary revisions shall be made to
6 the [Proposed] Final Approval Order and Judgment to be submitted to the Court.

7 29. Final Fairness Hearing. Upon expiration of the Document Receipt Deadline, the
8 Parties shall attend a Final Settlement Approval Hearing with the Court to finally approve the
9 Settlement as fair, reasonable, and adequate as to (a) Class Members; (b) attorneys' fees and costs
10 to Class Counsel; (c) the enhancement award to the Class Representative; (d) the costs and fees for
11 settlement administration; (e) the PAGA Allocation; and (f) the Individual Settlement Awards to be
12 paid to the Class Members, including the methodology used to calculate such awards.

13 **X. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

14 30. Final Settlement Approval, And Entry Of Judgment. At or before the Final
15 Settlement Approval Hearing, Class Counsel shall submit the [Proposed] Final Settlement
16 Approval Order and Judgment to the Court for the Court's approval and entry. After entry of the
17 Final Settlement Approval Order and Judgment, the Court shall have continuing jurisdiction over
18 the administration of the Settlement.

19 31. Payment Of Settlement Amount. Not later than twenty-one (21) calendar days
20 following the Effective Date, Defendant shall deposit the Total Class Action Settlement Amount,
21 into an account established by the Settlement Administrator. The Settlement Administrator will
22 retain authority over the deposited funds, which are to be used in accordance with this Stipulation
23 and any orders of the Court. The Settlement Administrator shall make all payments and other
24 disbursements required by this Stipulation from the Total Class Action Settlement Amount.
25 Defendant shall have no further obligations over the distribution of the Total Class Action
26 Settlement Amount.

27 32. Provision Of Final Settlement Approval Order And Judgment To Settlement
28 Administrator. Within two (2) business days of final approval by the Court of the Settlement

provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a copy of the Final Settlement Approval Order and Judgment.

XI. ADDITIONAL TERMS

33. Nullification Of Settlement. This Stipulation shall be null and void, and any order of judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if any of the following occurs:

- a) The Court does not enter the Final Settlement Approval Order and Judgment as provided for herein or contemplated by this Stipulation;
- b) The Court does not finally approve the Settlement as provided for herein;
- c) The Court does not enter a Final Settlement Approval Order and Judgment as provided for herein that becomes final as a result of the occurrence of the Effective Date; or
- d) The Settlement does not become final for any other reason.

In such a case, the Parties shall be returned to their respective statuses as of the date of August 26, 2021, and the Parties shall proceed in all respects as if this Stipulation had not been executed. If an appeal is filed from the Court's Final Settlement Approval Order and Judgment prior to the Effective Date, administration of the Settlement shall be immediately stayed pending final resolution of the appeal process.

34. No Admissions. Nothing contained herein is to be construed or deemed to be an admission of liability or wrongdoing by Defendant. This Stipulation and the attached exhibits are settlement documents, and, pursuant to California Evidence Code section 1152, these documents shall be inadmissible in any proceeding except in an action or proceeding to approve, interpret, or enforce this Stipulation.

35. No Unalleged Claims. Plaintiff and Class Counsel represent that, as of the date of execution of this Stipulation, they are not currently aware of: (a) any unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) any unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically

1 alleged in the Complaint, First Amended Complaint, and/or Second Amended Complaint in this
2 Action. Plaintiff and Class Counsel further represent and agree that, other than the instant Action,
3 they have no current intention of asserting any other claims against Defendant in any judicial or
4 administrative forum, and that they do not currently know of or represent any persons who have
5 expressed any interest in pursuing litigation or seeking any recovery against Defendant. The
6 Parties further acknowledge, understand, and agree that the representations described in this
7 paragraph are essential to the Settlement and that this Settlement would not have been entered into
8 were it not for this representation.

9 36. Amendment Or Modification. This Stipulation may be amended or modified only
10 by a written instrument signed by counsel for all Parties.

11 37. Entire Agreement. This Stipulation and the accompanying exhibits constitute and
12 comprise the entire agreement between the Parties. No oral or written representations, warranties,
13 or inducements have been made to any of the Parties concerning this Stipulation other than the
14 representations, warranties, and covenants contained and memorialized herein.

15 38. Construction. The Parties agree that the terms of this Stipulation and the
16 accompanying exhibits are the result of lengthy, arms-length negotiations, and that this Stipulation
17 shall not be construed in favor of or against any of the Parties by reason of the extent to which any
18 of the Parties or their respective counsel participated in the drafting of this Stipulation.

19 39. Parties' Authority. The signatories to this Stipulation represent that they are fully
20 authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions
21 hereof.

22 40. Successors And Assigns. This Stipulation is binding upon, and inures to the benefit
23 of, the Parties' successors and assigns. The Parties represent and warrant that they have not,
24 directly or indirectly, assigned, transferred, or encumbered to any person or entity any portion of
25 any claim, demand, action, cause of action, or rights herein released and discharged except as set
26 forth herein.

27 41. Enforcement Of Actions. In the event that any of the Parties to this Stipulation
28 institutes any legal action, arbitration, or other proceeding against any of the other Parties to

1 enforce the provisions of this Stipulation or to declare rights or obligations under this Stipulation,
2 the successful Party shall be entitled to recover from the unsuccessful Party or Parties, reasonable
3 attorneys' fees and costs, including expert witness fees, incurred in connection with any such
4 enforcement proceedings.

5 42. Governing Law. All terms of this Stipulation shall be governed by and interpreted
6 according to the laws of the State of California.

7 43. Jurisdiction Of The Court. The Court shall retain jurisdiction with respect to the
8 interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and
9 judgments entered in connection therewith.

10 44. Counterparts. This Stipulation may be executed in one or more counterparts. All
11 executed counterparts, and each of them, shall be deemed to be one and the same instrument.
12 Signatures may be affixed either by original signatures, PDF, or facsimile.

13 45. Notices. Unless otherwise specifically provided in this Stipulation, all notices,
14 demands, and/or other communications will be in writing and will be deemed to have been duly
15 given as of the third (3rd) business day after mailing by U.S. Mail, addressed as follows:

16 To Plaintiff & The Class:

17 SULLIVAN & YAECKEL LAW GROUP, APC
18 William B. Sullivan
19 Eric K. Yaeckel
20 2330 Third Avenue
21 San Diego, California 92101

22 To Defendant:

23 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
24 Evan R. Moses
25 Jennifer L. Katz
26 400 South Hope Street, Suite 1200
27 Los Angeles, California 90071

28 46. Enforceability. The Parties intend for this Agreement to be enforceable in the
Superior Court of California for the County of Orange, by and subject to the Court's pending
jurisdiction.

47. Interpretation. This Stipulation shall be construed as a whole according to its fair
meaning. It shall not be construed strictly for or against any Party. Unless the context indicates

otherwise, the term “or” shall be deemed to include the term “and,” and the singular or plural number shall be deemed to include the other. Captions and headings are intended solely for convenience of reference and shall not be used in the interpretation of this Stipulation.

48. Non-Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except to potential Class Members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this paragraph means Plaintiff and Class Counsel agree not to issue press releases; communicate with, or respond to, any media or publication entities; publish information in manner or form, whether printed or electronic, on any medium; or otherwise communicate, whether by print, video, recording, or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes.

49. Exhibits Incorporated By Reference. The terms of this Stipulation include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibit to this Stipulation is an integral part of the Settlement.

50. Interim Stay Of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain an Order granting Final Approval of the terms of the Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate either as of the Effective Date or the date upon which this Settlement has been denied by the Court and all subsequent attempts to cure deficiencies pursuant to Paragraph 24 have ended.

51. Invalidity Of Any Provision. Before declaring any provision of this Stipulation invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible

1 consistent with applicable precedents so as to define all provisions of this Settlement valid and
2 enforceable.

3 52. Class Certification For Settlement Purposes Only. The Parties agree to stipulate to
4 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not
5 approved, the stipulation to certification will be void. The Parties further agree that certification
6 for purposes of the Settlement is not an admission that class certification is proper under the
7 standard applied to contested certification motions and that this Settlement will not be admissible
8 in this or any other proceeding as evidence that (i) a class should or should not be certified, or (ii)
9 Defendant is or is not liable to the Class Representative or the putative Class Members.

10 53. Adding Class Claims For Settlement Purposes Only. Defendant agrees to stipulate
11 to allow Plaintiff to add Class claims against Defendant in the Action for the purpose of
12 effectuating the Settlement, as such was considered as part of the Parties' settlement negotiations.
13 Attached hereto as **Exhibit D** is a Second Amended Complaint, to be deemed the operative
14 complaint in this matter as of the date that the Preliminary Approval Order is entered. If, for any
15 reason, the Settlement is not approved and/or final approval is not granted as anticipated in this
16 Stipulation, Defendant reserves the right to object to the addition of Class claims against
17 Defendant.

18 54. All Terms Subject To Final Court Approval. All amounts and procedures described
19 in this Stipulation shall be subject to final Court approval.

20 55. Execution Of Necessary Documents. All Parties shall execute all documents
21 reasonably necessary to effectuate the terms of this Settlement.

22 56. Binding Agreement. The Parties intend that this Settlement shall be fully
23 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
24 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
25 otherwise might apply under federal or state law.

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DATED: 11/16, 2021

By: Tamara Whitmer
Tamara Whitmer

Plaintiff and Class Representative

DATED: _____, 2021

USP MISSION HILLS, INC.

By: _____
Name: _____

Title: _____

DATED: Nov. 17, 2021

SULLIVAN & YAECKEL LAW GROUP, APC

By: Eric Yaeckel
William B. Sullivan
Eric K. Yaeckel

Attorneys for Plaintiff TAMARA WHITMER

DATED: _____, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
Evan R. Moses
Jennifer L. Katz

Attorneys for Defendant
USP MISSION HILLS, INC.

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DATED: _____, 2021

By: _____
Tamara Whitmer
Plaintiff and Class Representative

DATED: NOVEMBER 29, 2021

USP MISSION HILLS, INC.

By: Eru Boon
Name

Title

DATED: _____, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
William B. Sullivan
Eric K. Yaeckel
Attorneys for Plaintiff TAMARA WHITMER

DATED: _____, 2021

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: _____
Evan R. Moses
Jennifer L. Katz
Attorneys for Defendant
USP MISSION HILLS, INC.

1 DATED: _____, 2021

3 By: _____
4 Tamara Whitmer

5 Plaintiff and Class Representative

6 DATED: _____, 2021

7 USP MISSION HILLS, INC.

9 By: _____
10 Name

11 Title

12 DATED: _____, 2021

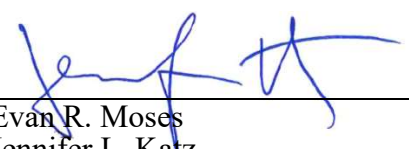
13 OGLETREE, DEAKINS, NASH, SMOAK &
14 STEWART, P.C.

16 By: _____
17 William B. Sullivan
18 Eric K. Yaeckel

19 Attorneys for Plaintiff TAMARA WHITMER

20 DATED: November 29, 2021

21 OGLETREE, DEAKINS, NASH, SMOAK &
22 STEWART, P.C.

23 By:  _____
24 Evan R. Moses
25 Jennifer L. Katz

26 Attorneys for Defendant
27 USP MISSION HILLS, INC.
28

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

TAMARA WHITMER, individually, in a Representative capacity, and on behalf of other members of the public similarly situated, Plaintiff, vs. USP MISSION HILLS, INC., a California Corporation, and Does 1-10, inclusive, Defendants.	CASE NO.: 20CHCV00209 JUDGE: Honorable Stephen P. Pfahler DEPARTMENT: F49 NOTICE OF CLASS ACTION SETTLEMENT
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I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Tamara Whitmer v. USP Mission Hills, Inc.*, Case No. 20CHCV00209 (the “Action”).

This notice is to inform you of the proposed Settlement of the Action. The notice is also intended (i) to describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you; and (ii) to advise you of your rights and options with respect to the Settlement.

You are receiving this notice by order of the Court because the records of USP Mission Hills, Inc. (“USP Mission Hills”) indicate that you are a current or former USP Mission Hills employee who worked in California as a non-exempt employee during the time period of March 18, 2016 to **the earlier of December 31, 2021 or the date of preliminary approval of the settlement** (the “Class”). As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the Settlement will **not** affect your employment with USP Mission Hills in any way whatsoever.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In March 2020, a former USP Mission Hills employee in California filed a lawsuit in which she alleged violations of California wage-and-hour laws on a representative basis as to all of USP Mission Hills’s current and former non-exempt employees in California, seeking civil penalties under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”) for the following alleged violations: (1) meal and rest period violations; (2) minimum wage violations; (3) overtime violations; (4) wage statement violations; (5) failure to reimburse; and (6) failure to pay wages upon separation. The individual who is suing USP Mission Hills is referred to in this document as “Plaintiff.” Plaintiff’s attorneys, Sullivan & Yaeckel Law Group, APC, have been litigating the Action in State Court prior to this settlement.

As part of the settlement, USP Mission Hills has also agreed to allow Plaintiff to add claims to the Action on behalf of a Class of non-exempt California employees since March 18, 2016 for the alleged substantive legal violations stated above.

USP Mission Hills claims that the members of the Class have been paid all monies that were due to them, maintains that it has complied with California's wage-and-hour laws, and denies all wrongdoing.

The Court has not ruled on whether Plaintiff's allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiff and USP Mission Hills have negotiated a settlement whereby USP Mission Hills has agreed to pay **\$375,000.00** to resolve the matter. As a Class Member, you are eligible to receive a portion of this amount.

This settlement is **not** an admission by USP Mission Hills of any liability.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All persons who were employed by and worked for USP Mission Hills as non-exempt employees in California at any time during the time period of March 18, 2016 to **[the earlier of December 31, 2021 or the date of preliminary approval of the settlement]** (the "Class Period").

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties' proposed settlement, the following will occur if the settlement is given final approval by the Court:

USP Mission Hills will pay **Three Hundred Seventy-Five Thousand Dollars** (\$375,000.00) to settle the claims of all Class Members.

A settlement administrator has been appointed by the Court to administer the settlement. The settlement administrator will pay from the \$375,000.00: (1) Plaintiff's counsel's attorneys' fees, up to one-third of the settlement value (or \$125,000.00); (2) Plaintiff's costs of litigation, up to the amount of \$15,000.00; (3) The expenses of administering the settlement, up to the amount of \$6,750.00; (4) An enhancement award of up to \$5,000.00 for Plaintiff's role in pursuing the litigation; (5) the employer's share of payroll taxes on the wage portion of the settlement; and (6) A payment of \$45,000.00 to the California Labor & Workforce Development Agency, representing 75% of the \$60,000.00 allocated to the settlement of Plaintiff's claim for civil penalties under PAGA. The remainder of the \$375,000.00 will be paid to the Class Members in settlement of their individual claims (the "Class Payment"). Please Note: separate and aside from the \$375,000.00 total settlement that will be paid to settle the claims of all Class Members, an additional \$25,000.00 will also be paid to Plaintiff as a severance payment and in exchange for a complete release of all of Plaintiff's individual claims.

The Class Payment will be divided among all Class Members based on the estimated number of weeks worked for USP Mission Hills in non-exempt roles in California by each Class Member. That is, the Class Payment will be divided by the number of aggregate qualified weeks worked by all Class Members during the Class Period to produce a "Weekly Settlement Value." A "qualified week" is any week in which a Class Member was employed by and worked for USP Mission Hills in California in a non-exempt role during the Class Period. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of qualified weeks you worked for USP Mission Hills in a non-exempt role during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings.

If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release USP Mission Hills and all of USP Mission Hills's current or former parent companies, subsidiary companies and/or related companies, partnerships, joint ventures, and/or staffing agencies, and, with respect to each of them, all of their and/or such related entities' predecessors and successors, and, with respect to each such entity, all of its past, present, and future employees, officers, partners, principals, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through, under, or in concert with any of the persons or entities listed in this subsection, and their successors (the "Released Parties"), from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities that have been asserted by Plaintiff, or the Class Members or any of their respective heirs, executors, administrators, beneficiaries, predecessors, successors, attorneys, assigns, agents, and/or representatives arising out of any claims that were encompassed in the Action, and any claims which reasonably flow from the facts alleged in Plaintiff's Complaint, First Amended Complaint, or Second Amended Complaint, including, but not limited to: claims for unpaid wages (including claims for minimum wage, regular wages, and overtime compensation), meal and rest periods, failure to pay or calculate proper meal and rest period premiums (including claims for failure to pay premiums and failure to pay premiums at the correct rate of pay), unreimbursed business expenses, interest, penalties (including waiting time penalties pursuant to Labor Code sections 203 and 204, pay stub penalties pursuant to Labor Code section 226, recordkeeping penalties pursuant to Labor Code section 1174, and civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code sections 2698, *et seq.*) ("PAGA")), claims pursuant to all of the theories of relief described above, including but not limited to penalties relating to alleged violations of Labor Code sections 200, 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802, the Industrial Welfare Commission Wage Orders relating to claims for unpaid hours worked, meal periods and rest breaks, provision and maintenance of tools and equipment, and recordkeeping, and claims under Business and Professions Code sections 17200, *et seq.*, claims for attorneys' fees and costs, conversion, fraud, common count, and unfair business practices (collectively, the "Released Class Claims"). Released Class Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest, costs and fees, injunctive or equitable relief, and any other remedies available at law or equity (including, to the extent permitted by law the FLSA), allegedly owed or available to the Class arising or reasonably flowing from the allegations contained in the Complaint, First Amended Complaint, and/or Second Amended Complaint against the Released Parties for the time period from the beginning of time up to and including the last date of the Class Period. You will be barred from prosecuting any of the Released Class Claims against the Released Parties.

Please Note: If you worked for USP Mission Hills in California in a non-exempt role during the PAGA Period, which is from January 6, 2019 to **the earlier of December 31, 2021 or the Preliminary Approval Date**, you may not opt-out of the portion of the Settlement relating to the settlement of claims under PAGA. Even if you opt-out of the Class Action, you will still receive a check for your share of the 25% allocation of PAGA penalties designated for Class Members who worked for USP Mission Hills in California as non-exempt employees during the PAGA Period. This payment will represent a payment for resolving disputed claims for civil penalties that were brought on your behalf. You will be bound by the PAGA portion of the release whether or not you cash this check. If you opt-out from the settlement (as described below), you will not be bound by the release of any claims that are not PAGA claims. This provision only applies to Class Members who worked within the PAGA Period as defined above.

In addition, if the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will be bound by a limited waiver of California Civil Code section 1542 ("Section 1542"), which provides:

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.

Through this limited Section 1542 release, you will be releasing all claims against the Released Parties, whether known or unknown, within the definition of “Released Class Claims” (as defined above), irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the Section 1542 waiver is limited to the Released Class Claims described above.

V. WHAT ARE MY OPTIONS?

A. *You may accept your share of the \$375,000.00 settlement and be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the settlement administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void; *or*

B. *You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement.* If you choose to be excluded, by no later than [REDACTED] (30 calendar days after mailing of this Notice), you must send a written request for exclusion, by mail, to the settlement administrator, Phoenix Settlement Administrators, located at [REDACTED]. In order to be considered valid, your request for exclusion *must* include your name, your address, a request for exclusion, and your signature. However, as noted above, if you are a Class Member who worked for USP Mission Hills in California as a non-exempt employee within the PAGA Period, you will still receive a share of PAGA penalties and be bound by the release described above as to PAGA claims only.

C. *You may object to the settlement.* The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The settlement administrator will calculate your share of the settlement and will issue you a check.

B. Thirty-three percent (33%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining sixty-seven percent (67%). You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the settlement administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on [REDACTED], 2022, at [REDACTED] a.m., in Department F49 of the Los Angeles County Superior Court, located at the Chatsworth Courthouse, 9425 Penfield Ave., Chatsworth, CA 91311, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the

hearing. Sullivan & Yaeckel Law Group, APC (contact information below), counsel for Plaintiff and the Class, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Please review the Los Angeles Superior Court's website (<http://www.lacourt.org/>), which sets forth procedures for making appearances, including making remote appearances by phone or video. Given the ongoing Covid-19 pandemic, the Court's policies as to remote appearances are constantly being updated and Class Members are urged to review the Court's website or contact Plaintiff's counsel if they have any questions in that regard.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the Settlement and telling the Court that you don't agree with the Settlement or some part of it. The Court will consider your views. To object, you must send a letter, which you must sign, saying that you object to the settlement of *Tamara Whitmer v. USP Mission Hills, Inc.*, Case No. 20CHCV00209. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number and/or your USP Mission Hills employee ID number, your address, the specific reasons you object to the terms of the Settlement, and your signature. If you wish to speak at the Final Approval Hearing, you must also indicate in your objection letter that you intend to appear at the Final Approval Hearing. Mail the objection to the address listed below postmarked or faxed to (800) [REDACTED] on or before [REDACTED] (30 days after mailing).

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. For more detailed information, you may inspect the Court's files, the settlement agreement, and any papers filed in the Action, at the Clerk's Office of the Los Angeles County Superior Court, Stanley Mosk Courthouse, located at 111 North Hill Street, Los Angeles, CA 90012 during regular court hours, case number 20CHCV00209.

If you have any questions, you can call the Settlement Administrator at [REDACTED] or any of Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING PLAINTIFF AND THE CLASS

SULLIVAN & YAECKEL LAW GROUP, APC
William B. Sullivan [helen@sullivanlawgroupapc.com]
Eric K. Yaeckel [yaeckel@sullivanlawgroupapc.com]
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

ATTORNEYS REPRESENTING USP MISSION HILLS, INC.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Evan R. Moses
Jennifer L. Katz
400 South Hope Street, Suite 1200
Los Angeles, California 90071

**PLEASE DO NOT CALL THE COURT, USP MISSION HILLS, USP MISSION
HILLS'S CORPORATE OFFICE AND MANAGERS, OR USP MISSION
HILLS'S ATTORNEYS REGARDING THIS SETTLEMENT.**

EXHIBIT B

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TAMARA WHITMER, individually, in a
Representative capacity, and on behalf of other
members of the public similarly situated,

Plaintiff,

vs.

USP MISSION HILLS, INC., a California
corporation and DOES 1-10, inclusive,

Defendants.

Case No. 20CHCV00209

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

[Assigned for all purposes to
The Honorable Stephen P. Pfahler, Dept. F49]

Action Filed: March 18, 2020
Trial Date: None

1 This matter came on for hearing on January 12, 2021, upon the Motion for Preliminary
2 Approval of the proposed settlement of this action on the terms set forth in the Joint Stipulation re:
3 Class Action Settlement (the “Settlement” or “Stipulation”), attached hereto as **Exhibit 1**. Having
4 considered the Settlement, all papers and proceedings held herein, and having reviewed the entire
5 record in this action, Case No. 20CHCV00209, entitled *Tamara Whitmer v. USP Mission Hills,*
6 *Inc.* (the “Action”), and good cause appearing, the Court finds that:

7 WHEREAS, plaintiff Tamara Whitmer (“Plaintiff”) has alleged claims against defendant
8 USP Mission Hills, Inc. (“Defendant”) on behalf of herself and on behalf of others similarly
9 situated, comprising: “All persons who worked for defendant USP Mission Hills, Inc. as non-
10 exempt employees in the State of California at any time during the Class Period”; and

11 WHEREAS, Plaintiff asserts claims against Defendant for (1) Failure to Pay Minimum
12 Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to
13 Provide Rest Breaks; (5) Failure to Provide Compliant Wage Statements; (6) Failure to Pay All
14 Wages Upon Separation; (7) Failure to Reimburse Business Expenses; (8) civil penalties under the
15 Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”);
16 and (9) Unfair Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and

17 WHEREAS, Defendant expressly denies the allegations of wrongdoing and violations of
18 law alleged in this Action, and further denies any liability whatsoever to Plaintiff or to the Class
19 Members; and

20 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendant
21 (collectively, the “Parties”) determined that it was mutually advantageous to settle this Action and
22 to avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

23 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
24 about November 29, 2021, which provides for a complete dismissal, with prejudice, of the claims
25 asserted in the Action against Defendant on the terms and conditions set forth in the Stipulation,
26 subject to the approval of this Court;

27 NOW, therefore, the Court grants preliminary approval of the Settlement, and

28 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1 1. To the extent defined in the Joint Stipulation re: Class Action Settlement, attached
2 hereto as **Exhibit 1** and incorporated herein by reference, the terms in this Order shall have the
3 meanings set forth therein.

4 2. The Court has jurisdiction over the subject matter of this Action, Defendant, and the
5 Class.

6 3. The Class is defined as follows: “All persons who worked for defendant USP
7 Mission Hills, Inc. as non-exempt employees in the State of California at any time during the Class
8 Period.”

9 4. The Class Period is defined as March 18, 2016 to the earlier of December 31, 2021
10 or the date of entry of this Order.

11 5. The Court approves the filing of the Second Amended Complaint, attached as
12 **Exhibit D** to the Stipulation, adding individual and Class claims against Defendant for (1) Failure
13 to Pay Minimum Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods;
14 (4) Failure to Provide Rest Breaks; (5) Failure to Provide Compliant Wage Statements; (6) Failure
15 to Pay All Wages Upon Separation; (7) Failure to Reimburse Business Expenses; and (8) Unfair
16 Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.* The Second Amended Complaint is
17 hereby deemed to be the operative complaint in this Action as of the date of entry of this Order.
18 The Court expressly acknowledges and declares that Defendant is deemed to have denied,
19 generally and specifically, each and every allegation and claim in the Second Amended Complaint
20 without the necessity of filing an Answer thereto.

21 6. The Court has determined that the intended notice to be given to the Class fully and
22 accurately informs all persons in the Class of all material elements of the proposed Settlement,
23 constitutes the best notice practicable under the circumstances, and constitutes valid, due, and
24 sufficient notice to all Class Members.

25 7. The Court hereby grants preliminary approval of the Settlement and Stipulation as
26 fair, reasonable, and adequate in all respects to the Class Members and Orders the parties to
27 consummate the Settlement in accordance with the terms of the Stipulation.

28 8. The plan of distribution as set forth in the Stipulation providing for the distribution

of the Net Settlement Amount to Settlement Class Members is preliminarily approved as being fair, reasonable, and adequate.

9. The Court preliminarily appoints as Class Counsel the following attorneys: William B. Sullivan and Eric K. Yaeckel of Sullivan & Yaeckel Law Group, APC, 2330 Third Avenue, San Diego, California 92101.

10. The Court preliminarily approves the payment of attorneys' fees in the amount of \$125,000.00 to Class Counsel, which shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

11. The Court preliminarily approves the payment of attorneys' costs in the amount of \$15,000.00 to Class Counsel, which shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

12. The Court preliminarily approves a payment in the amount of \$45,000.00 to the California Labor & Workforce Development Agency, representing the State of California's portion of civil penalties under PAGA, which shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

13. The Court preliminarily approves the payment of reasonable settlement administration costs to the Settlement Administrator, Phoenix Settlement Administrators, in the amount of \$6,750, which shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

14. The Court preliminarily approves an enhancement award to Plaintiff and class representative Tamara Whitmer the amount of \$ \$5,000.00, which amount shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

15. This Preliminary Approval Order and the Stipulation, and all papers related thereto, are not, and shall not be construed to be, an admission by Defendant of any liability, claim, or wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or wrongdoing in this Action or in any other proceeding.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, then this Preliminary Approval Order shall be rendered null and void to

1 the extent provided by and in accordance with the Stipulation and shall be vacated, and, in such
2 event, all orders entered and releases delivered in connection herewith shall be null and void to the
3 extent provided by and in accordance with the Stipulation, and each party shall retain his or its
4 rights to proceed with litigation of the Action.

5
6 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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8 DATED: _____

9 Hon. Stephen P. Pfahler
10 Los Angeles County Superior Court Judge
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EXHIBIT C

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TAMARA WHITMER, individually, in a
Representative capacity, and on behalf of other
members of the public similarly situated,

Plaintiff,

vs.

USP MISSION HILLS, INC., a California
corporation and DOES 1-10, inclusive,

Defendants.

Case No. 20CHCV00209

**[PROPOSED] ORDER FINALLY
APPROVING CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT DISMISSING THE ACTION
WITH PREJUDICE**

[Assigned for all purposes to
The Honorable Stephen P. Pfahler, Dept. F49]

Action Filed: March 18, 2020
Trial Date: None

1 This matter came on for hearing on [REDACTED], upon the Motion for Final Approval of
2 the proposed settlement of this action on the terms set forth in the Joint Stipulation re: Class Action
3 Settlement (the “Settlement” or “Stipulation”), attached hereto as **Exhibit 1**. Due and adequate
4 notice having been given to the members of the Class, and having considered the Settlement, all
5 papers and proceedings held herein, and all oral and written comments received regarding the
6 proposed Settlement, and having reviewed the entire record in this action, Case No.
7 20CHCV00209, entitled *Tamara Whitmer v. USP Mission Hills, Inc.* (the “Action”), and good
8 cause appearing, the Court finds that:

9 WHEREAS, plaintiff Tamara Whitmer (“Plaintiff”) has alleged claims against defendant
10 USP Mission Hills, Inc. (“Defendant”) on behalf of herself and on behalf of others similarly
11 situated, comprising: “All persons who worked for defendant USP Mission Hills, Inc. as non-
12 exempt employees in the State of California at any time during the Class Period”; and

13 WHEREAS, Plaintiff asserts claims against Defendant for (1) Failure to Pay Minimum
14 Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to
15 Provide Rest Breaks; (5) Failure to Provide Compliant Wage Statements; (6) Failure to Pay All
16 Wages Upon Separation; (7) Failure to Reimburse Business Expenses; (8) civil penalties under the
17 Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”);
18 and (9) Unfair Business Practices, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and

19 WHEREAS, Defendant expressly denies the allegations of wrongdoing and violations of
20 law alleged in this Action, and further denies any liability whatsoever to Plaintiff or to the Class
21 Members; and

22 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendant
23 (collectively, the “Parties”) determined that it was mutually advantageous to settle this Action and
24 to avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

25 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
26 about November 29, 2021, which provides for a complete dismissal, with prejudice, of the claims
27 asserted in the Action against Defendant on the terms and conditions set forth in the Stipulation,
28 subject to the approval of this Court; and

1 WHEREAS, this Court granted preliminary approval of the Parties' Settlement in this
2 Action on or about [REDACTED] (the "Preliminary Approval Order"); and

3 WHEREAS, notice to the Class Members was sent in accordance with the Stipulation and
4 the Preliminary Approval Order; and

5 WHEREAS, a fairness hearing on the proposed Settlement having been duly held and a
6 decision reached;

7 NOW, therefore, the Court grants final approval of the Settlement, and

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

9 1. To the extent defined in the Joint Stipulation re: Class Action Settlement, attached
10 hereto as **Exhibit 1** and incorporated herein by reference, the terms in this Order shall have the
11 meanings set forth therein.

12 2. The Court has jurisdiction over the subject matter of this Action, Defendant, and the
13 Class.

14 3. The Court has determined that the notice given to the Class fully and accurately
15 informed all persons in the Class of all material elements of the proposed Settlement – including
16 the plan of distribution of the Settlement funds, the application for an enhancement award to the
17 Class Representative, and the application for an award of attorneys' fees and costs to Class Counsel
18 – constituted the best notice practicable under the circumstances, and constituted valid, due, and
19 sufficient notice to all Class Members.

20 4. The Court hereby grants final approval of the Settlement and Stipulation as fair,
21 reasonable, and adequate in all respects to the Class Members and Orders the parties to
22 consummate the Settlement in accordance with the terms of the Stipulation.

23 5. The plan of distribution as set forth in the Stipulation providing for the distribution
24 of the Net Settlement Amount to Class Members is approved as being fair, reasonable, and
25 adequate.

26 6. The Class is defined as follows: "All persons who worked for defendant USP
27 Mission Hills, Inc. as non-exempt employees in the State of California at any time during the Class
28 Period."

1 7. The Class Period is defined as March 18, 2016 to [REDACTED], 2021.

2 8. As previously held in the Court's Preliminary Approval Order, the Court appoints as
3 Class Counsel the following attorneys: William B. Sullivan and Eric K. Yaeckel of Sullivan &
4 Yaeckel Law Group, APC, 2330 Third Avenue, San Diego, California 92101.

5 9. The Court approves the payment of attorneys' fees in the amount of \$
6 _____ [not to exceed \$125,000.00] to Class Counsel, which shall be paid from, and not
7 in addition to, the Total Class Action Settlement Amount.

8 10. The Court approves the payment of attorneys' costs in the amount of
9 \$ _____ [not to exceed \$15,000.00] to Class Counsel, which shall be paid from, and not
10 in addition to, the Total Class Action Settlement Amount.

11 11. The Court approves a payment in the amount of \$45,000.00 to the California Labor
12 & Workforce Development Agency, representing the State of California's portion of civil penalties
13 under PAGA, which shall be paid from, and not in addition to, the Total Class Action Settlement
14 Amount.

15 12. The Court approves the payment of reasonable settlement administration costs to the
16 Settlement Administrator, [REDACTED], in the amount of \$ _____ [not to exceed
17 \$ [REDACTED].00], which shall be paid from, and not in addition to, the Total Class Action Settlement
18 Amount.

19 13. The Court approves an enhancement award to Plaintiff and class representative
20 Tamara Whitmer the amount of \$ _____ [not to exceed \$5,000.00], which amount shall
21 be paid from, and not in addition to, the Total Class Action Settlement Amount.

22 14. The Court hereby dismisses this Action with prejudice. Without affecting the
23 finality of this Final Order and Judgment, the Court reserves exclusive and continuing jurisdiction
24 over the Action; plaintiff Tamara Whitmer; the Class; and Defendant for the purposes of: **(a)**
25 supervising the implementation, enforcement, construction, and interpretation of the Stipulation,
26 the Preliminary Approval Order, the distribution of the Total Class Action Settlement Amount, and
27 this Final Order and Judgment; and **(b)** hearing and determining the application by Class Counsel
28 for an award of attorneys' fees, costs, and expenses, which hearings shall take place concurrently

1 with the hearing for this Final Order and Judgment.

2 15. Upon entry of this Final Order and Judgment, and by operation of this Final Order
3 and Judgment, the claims in this Action of each Class Member against Defendant, and against any
4 and all of the Released Parties (as defined in the Stipulation), are fully, finally, and forever
5 released, relinquished, and discharged pursuant to the terms of the Stipulation.

6 16. By operation of this Final Order and Judgment, all members of the Class are hereby
7 forever barred and enjoined from prosecuting the Released Class Claims and any claims covered
8 by the limited general release against any of the Released Parties (as defined in the Stipulation).

9 17. By operation of this Final Order and Judgment, the Class Representative is hereby
10 forever barred and enjoined from prosecuting the Released Class Claims and any claims covered
11 by the general release against any of the Released Parties (as defined in the Stipulation).

12 18. Each member of the Class is bound by this Final Order and Judgment, including,
13 without limitation, the release of claims as set forth in the Stipulation.

14 19. This Final Order and Judgment and the Stipulation, and all papers related thereto,
15 are not, and shall not be construed to be, an admission by Defendant of any liability, claim, or
16 wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or
17 wrongdoing in this Action or in any other proceeding.

18 20. In the event that the Settlement does not become effective in accordance with the
19 terms of the Stipulation, then this Final Order and Judgment shall be rendered null and void to the
20 extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event,
21 all orders entered and releases delivered in connection herewith shall be null and void to the extent
22 provided by and in accordance with the Stipulation, and each party shall retain his, her or its rights
23 to proceed with litigation of the Action.

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1 21. The Court finds that there is no just reason for delay of entry of this Final Order and
2 Judgment and hereby directs its entry.

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4 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

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6 DATED: _____

7 Hon. Stephen P. Pfahler
8 Los Angeles County Superior Court Judge
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EXHIBIT D

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Attorneys for Plaintiff TAMARA WHITMER, Individually, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

TAMARA WHITMER, in a Representative capacity only, and on behalf of other members of the general public similarly situated.

Plaintiff

v.

USP MISSION HILLS, INC., a California Corporation, and DOES 1-10, inclusive.

Defendants

CASE NO. 20CHCV00209

(Proposed CLASS ACTION)

SECOND AMENDED COMPLAINT FOR:

- 1. VIOLATION OF LABOR CODE §§ 226.7 and 512 (Class Claim)**
- 2. VIOLATION OF LABOR CODE §§ 510, 1194 and 1197 (Class Claim);**
- 3. VIOLATION OF LABOR CODE § 226 (Class Claim)**
- 4. VIOLATION OF LABOR CODE §§ 2802 (Class Claim)**
- 5. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 et seq. (Class Claim) and**
- 6. VIOLATION OF LABOR CODE §§ 2698 et. seq (Representative Claim)**

Demand for Jury Trial.

COMES NOW Plaintiff TAMARA WHITMER (“WHITMER”), Individually, and on behalf of all other members of the general public similarly situated, and alleges for her Second Amended Complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that Defendant USP MISSION HILLS, INC. (hereinafter, “USP” or “Defendants”) is a California Corporation, and is performing business in the state of California, and County of Los Angeles. Additionally, certain acts constituting the below violations were committed in the County of Los Angeles.
3. At all relevant times herein, Plaintiff WHITMER was and is an individual working in the County of Los Angeles, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants are responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
2 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said
3 Defendants. Wherever it is alleged herein that any act or omission was done or committed by
4 any specially named Defendant or Defendants, Plaintiff intends thereby to allege and does
5 allege that the same act or omission was also done and committed by each and every Defendant
6 named as a DOE, both separately and in concert or conspiracy with the named Defendant or
7 Defendants.

- 8 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
9 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
10 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
11 legal entities which were licensed to do and/or were doing business in the County of Los
12 Angeles, State of California at all times relevant to the subject matter of this action.

13 **FACTUAL BACKGROUND**

- 14 7. Plaintiff was employed by Defendants as a non-exempt employee, from approximately 2017
15 through October 2019. Throughout her employment with Defendants, Plaintiff performed her
16 job in a capable and competent manner, and was commended for doing so.
- 17 8. Throughout the term of her employment, Plaintiff and all other nonexempt employees were and
18 currently are denied the benefits and protections of the Labor Code due to Defendants'
19 institutionalized pay practices, standard as to all of Defendants' California-based, nonexempt,
20 non-union employees.

21 **CLASS ACTION ALLEGATIONS**

- 22 9. As more specifically set forth below, Plaintiff brings this action on behalf of an ascertainable
23 class and a well-defined community of interest among the class members. Code Civ. Proc. §
24 382; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 426, 470. Throughout the operative
25 limitations period, Plaintiff and all other class members were denied the protections and
26 benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due
27 to Defendants' standard practices. Throughout their employment, Plaintiff and all other class
28 members were and are denied full and accurate compensation, including overtime

1 compensation, in violation of, *inter alia*, Labor Code sections 510 and 1194. Plaintiff and the
2 other class members were and are denied Meal and Rest Periods and Meal and Rest Period
3 payments, in violation of, *inter alia*, IWC Wage Order 4 (or any other applicable Wage Order)
4 and Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage
5 statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse
6 Plaintiff and other class members for necessary business expenditures in violation of, *inter*
7 *alia*, Labor Code section 2802.

8 10. Plaintiff brings this action on the grounds that she and other similarly situated current and
9 former employees of Defendants were and are improperly denied the mandated wages and
10 reimbursements resulting from the above-referenced violations. *Sav-On Drug Stores, Inc. v.*
11 *Superior Court* (2004) 34 Cal.4th 319. The class is believed to contain approximately One
12 Thousand (1,000) members.

13 11. The approximately One Thousand (1,000) member class is ascertainable via their experience
14 as Defendants' current or former California-based employees, designated as "nonexempt" by
15 Defendants.

16 12. Class members share a community of interest and an injury-in-fact as Defendants have violated
17 California compensation laws, depriving class members of money earned.

18 13. There are questions of fact and law common to the class that predominate over any questions
19 affecting only individual members. The questions of law and fact common to the class arising
20 from Defendants' actions include, without limitation, the following:

21 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
22 double time wages due and owing to them;

23 b. Whether Defendants failed to provide its employees with statutorily-compliant Meal
24 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
25 226.7, in that Defendants written policies are not compliant with California law,
26 Defendants do not allow its employees duty-free breaks, and Defendants improperly
27 "round" employees recorded Meal Periods;

28 c. Whether Defendants failed to properly provide meal and rest break premiums in

- 1 accordance with law;
- 2 d. Whether Defendants failed to properly calculate and pay its employees overtime
- 3 compensation or Meal and Rest Period premiums in accordance with law by failing to
- 4 properly calculate, into the Regular Rate of Pay, the value of employee benefits;
- 5 e. Whether Defendants failed to properly reimburse its employees for necessary business
- 6 expenditures for, *inter alia*, cell phone costs and mileage, in violation of Labor Code
- 7 section 2802;
- 8 f. Whether Defendants failed to provide all compensation upon termination of
- 9 employment in violation of Labor Code sections 201-203, due, in part, to the fact that
- 10 Defendants failed to provide proper compensation for all hours worked, as discussed
- 11 above; and
- 12 g. Whether Defendants conduct constituted a violation of Business & Professions Code
- 13 section 17200 *et seq.*
- 14 14. The class on whose behalf this action is brought is so numerous that joinder of all parties
- 15 individually would be impracticable. Plaintiff brings the class action on behalf of
- 16 approximately One Thousand (1,000) nonexempt, California-based current and former
- 17 employees of Defendants who share a common or general interest, and it would be
- 18 impracticable for those employees to bring the action individually. Any variations in job
- 19 activities between the individual class members are legally insignificant to the issues presented
- 20 by this action since the central facts remain, to wit, Plaintiff and all other class members were
- 21 improperly denied the benefits and protections of the Labor Code and IWC Wage Order(s), by
- 22 and through Defendants' standard and institutionalized practices.
- 23 15. There are questions of law and fact common to the class. Plaintiff, and all class members,
- 24 were injured by Defendants' violations of the enumerated Labor Code sections and IWC Wage
- 25 Order(s). As these violations resulted from Defendants' standard and institutionalized
- 26 practices, questions of law and fact are common to the class.
- 27 16. Plaintiff's claims in this action are typical of the class whom Plaintiff generally represents.
- 28 The claims result from Defendants' standard and institutionalized practices, experienced by

1 Plaintiff and all other class members.

2 17. Plaintiff can fairly and adequately protect the interests of all the members of the class he
3 represents in this action. Any difference in job titles is immaterial, as Defendants used (and
4 uses) standard systems to compensate class members. Plaintiff's experience and knowledge
5 of Defendants' "wage and hour" practices, in addition to Plaintiff's familiarity with Defendants
6 pay policies pertaining to the class members he represents, entitles him to adequately and fairly
7 represent the class.

8 18. Common questions predominate over questions affecting individual class members. Plaintiff
9 and all other class members were improperly denied the benefits and protections of the Labor
10 Code and IWC Wage Order(s) by and through Defendants' standard and institutionalized
11 practices. Common questions of law or fact therefore "present a significant aspect of the case"
12 and are capable of resolution "in a single adjudication." *Hanlon v. Chrysler Corp.* (9th Cir.
13 1998) 150 F.3d 1011, 1022.

14 19. At all times mentioned herein, Defendants are and were "employers" as that term is used
15 within the relevant sections of the California Labor Code.

16 **FACTUAL BACKGROUND**

17 20. In or about 2017, Plaintiff commenced working for Defendants. Throughout her employment
18 with Defendants, Plaintiff has performed her job in a capable and competent manner, and has
19 been commended for doing so.

20 21. Throughout the term of her employment, Plaintiff and all other members of the Class action
21 were and currently are denied the benefits and protections of the Labor Code and IWC Wage
22 Order(s), due to Defendants' institutionalized pay practices, standard as to all California-based,
23 nonexempt employees.

24 **FIRST CAUSE OF ACTION**

25 **Meal and Rest Period Violations Pursuant to Labor Code §§ 226.7 and 512** 26 **Class Action**

27 **(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)**

28 22. Plaintiff hereby incorporates by reference paragraphs 1 through 21 as though fully set forth
herein.

23. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

24. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...] An 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” Lab. Code § 512(a); see also 8 Cal. Code Regulations. § 11040 (11)(A). Unless the employee is relieved of all duty for a full thirty (30) minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. 8 Cal. Code Regulations. § 11040 (11); *See Safeway v. Superior Court* (2015) 238 Cal.App.4th 1138, 1160.

25. California law requires employers to provide employees with a 10-minute rest break for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (12).

26. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11040 (11), (12).

27. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

28. For example, Defendants’ Rest Period policy and practice does not provide the right for employees to “leave the premises,” and actually requires the employees to “remain on premises for the duration of this rest period” where “coverage” issues require as such.

29. Defendants’ Meal and Rest Period policy also assumes that employees have “waived” the right to a legally-compliant Meal or Rest Period, or a Meal or Rest Period penalty payment, unless the employees complete a very specific process of formal notification to the Defendants.

- 1 30. Moreover, Defendants policies and practices preclude “duty-free” Meal and Rest Periods.
2 These institutional and established practices of Defendants are illegal, in that Plaintiff and all
3 other employees were denied proper and/or timely Meal and Rest Periods. As a final example,
4 Defendants are aware (or reasonably should be aware) that its own internal records evidence
5 illegal (*i.e.* “missing,” “short” or “late”) Meal and Rest Periods.
- 6 31. These violations are due, in part, to the fact that Defendants do not possess a legal Rest Period
7 policy or practice, as its Rest Period policy lacks required language, resulting in employees
8 failing to receive all Rest Periods legally due. Defendants do not provide Rest Periods, as
9 defined by California law. Further, Defendants have never provided a Rest Period penalty
10 payment to any employee.
- 11 32. Defendants also do not possess a legal Meal Period policy, and make no attempt to ensure that
12 its employees are either timely or wholly provided Meal Periods. The employees would often
13 either miss a Meal Period entirely, be provided a short or late Meal Period, or be provided only
14 one Meal Period, even when they were working in excess of 10 hours a day. Additionally,
15 Defendants failed to accurately record its employees actual start and stop times of Meal
16 Periods, in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11040 (7)(A)(3).
- 17 33. Moreover, Defendants’ policies and practices preclude “duty-free” Meal and Rest Periods, in
18 that the employees are required to remain “On Call” at all times, including during the Meal and
19 Rest Periods, in order to (among other reasons) respond to sudden “customer rushes.” These
20 institutional and established practices of Defendants are illegal, in that Plaintiff and all other
21 class members were denied proper and/or timely Meal and Rest Periods.
- 22 34. Defendants willfully failed and refused to pay Plaintiff and all other class members one
23 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
24 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 5 (11), (12).
- 25 35. Any payments made by Defendants for missed or late Meal Periods were not paid at an
26 employee’s regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
27 Orders. Instead, these payments were made at an employee’s base rate and did not include the
28 value of, *inter alia*, additional compensation and/or employee benefits such as (for example)

Shift Differentials, and non-discretionary bonuses.

36. As a direct result of Defendants' willful failure and refusal to comply with the California Labor Code, Plaintiff and other employees have suffered injury, loss, and harm in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.

37. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this Complaint when the amounts are more fully known.

SECOND CAUSE OF ACTION
Minimum Wage and Overtime Violations Pursuant to Labor Code §§ 510, 1194 and 1197
Class Action
(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

38. Plaintiff incorporates by reference paragraphs 1 through 37 as though fully set forth herein.

39. Throughout the applicable time period, Plaintiff and the other Class Members were denied the benefits and protections of the California Labor Code and IWC Wage Order(s) and were damaged thereby.

40. Defendants failed to pay its employees all compensation due, including overtime compensation, in violation of, among other statutes, Labor Code sections 510 and 1197. This failure was caused by several separate uniform practices of Defendants. This failure was caused by and through Defendants failure to maintain accurate Time Records (as required by California law), to the detriment of the employee. Specifically, although Defendants would receive "to-the-minute" start and end times (from its employees required actions), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Additionally, the right to receive the proper minimum wage and overtime compensation was impacted by Defendants knowingly failing to consider other work performed by the employees. Finally, Defendants' failed to keep accurate time records which reflected when its employees were actually working or under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including the proper minimum wage and overtime compensation.

1 41. Additionally, Defendants failed to properly calculate Plaintiff's regular rate of pay for purposes
2 of overtime compensation such that the value of employee's benefits were not included in the
3 calculation of Plaintiff's regular rate of pay. Plaintiff is informed and believes and thereon
4 alleges that at all relevant times herein, Defendants failed to take into account the value of all
5 employee benefits (*i.e.* failure to calculate Shift Differentials and non-discretionary bonuses)
6 when calculating their regular rates of pay, for purposes of overtime compensation, in violation
7 of Labor Code section 510. Additionally, by altering its employees' time records, as referenced
8 above, Defendants alter the actual hourly rate of pay for its employees. Defendants do not
9 factor in this actual hourly rate, when calculating the overtime rate of pay, in violation of Labor
10 Code section 510.

11 42. Defendants failed to pay Plaintiff and all other class members all compensation due, including
12 Overtime Compensation, due in violation of, among other statutes, Labor Code section 510.
13 These violations occurred due to Defendants' illegal policies, referenced above, including the
14 failure to accurately record employee time worked, whereby employees experienced monetary
15 under-compensation. These violations also occurred as Defendants had several policies and
16 practices which required employees to work in excess of 8 hours, without receiving all
17 overtime (and/or double-time) compensation. The systematic failure to provide proper
18 overtime compensation is a violation of California law.

19 43. As a direct result of Defendants' willful failure and refusal to comply with the California Labor
20 Code, Plaintiff and other employees have suffered injury, loss, and harm all to their damages
21 in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory
22 damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.

23 44. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
24 presently unaware of the precise amount of these expenses and fees and prays leave of court
25 to amend this Complaint when the amounts are more fully known.
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THIRD CAUSE OF ACTION
Wage Statement Violations Pursuant to Labor Code § 226
Class Action
(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

45. Plaintiff hereby incorporates by reference paragraphs 1 through 44 as though fully set forth herein.

46. Throughout the applicable time period, Plaintiff and the other class members were denied the benefits and protections of the California Labor Code and IWC Wage Order(s) and were damaged thereby.

47. Defendants failed to provide Plaintiff and all other members of the Class action with accurate itemized wage statements in violation of, among other statutes, Labor Code section 226. These violations include, but are not limited to, Defendants failure to provide an accurate showing of the gross wages earned, in violation of Labor Code section 226(a)(1), due to under-payments caused by the “Regular” time and Overtime allegations listed above, Defendants failure to accurately identify all applicable regular and overtime (including double-time) rates of pay in violation of section 226(a)(9), and providing inaccurate representations of both “gross” and “net wages.”

48. As a direct result of Defendant’s willful failure and refusal to comply with the California Labor Code, Plaintiff and other employees have suffered injury, loss, and harm all to their damages in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.

49. Plaintiff has incurred and continues to incur legal expenses and attorneys’ fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays for leave of court to amend this Complaint when the amounts are more fully known.

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FOURTH CAUSE OF ACTION
Failure to Reimburse Pursuant to Labor Code § 2802
Class Action

(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

50. Plaintiff hereby incorporates by reference paragraphs 1 through 49 as though fully set forth herein.
51. Defendants failed to reimburse Plaintiff and all other Class Members for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur mileage costs without full reimbursement. Plaintiff and all other Class Members were also forced to incur cell phone costs, without reimbursement.
52. As a direct result of Defendants' willful failure and refusal to comply with the California Labor Code, Plaintiff and other non-exempt employees have suffered injury, loss, and harm all to their damages in a sum according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back pay (or penalty), prejudgement interest, and other remedies set forth below.
53. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays for leave of court to amend this Complaint when the amounts are more fully known.

FIFTH CAUSE OF ACTION
Violation of Business and Professions Code § 17200
Class Action

(Individually, and on behalf of the Class against Defendants and DOES 1 through 10)

54. Plaintiff hereby incorporates by reference paragraphs 1 through 53 as though fully set forth herein.
55. Plaintiff is a direct victim of Defendants' illegal and/or unfair business acts and practices referenced in this complaint, has lost money as a result of such practices, and brings this action both in his individual capacity and on behalf of Defendants' current and former California-based, nonexempt employees who share a common or general interest in the damages as a result of the illegal and/or unfair practices.

- 1 56. The approximately 1,000 member class is ascertainable via their experience as Defendants’
2 current or former California-based, nonexempt employees. Class members share a community
3 of interest and an injury-in-fact as Defendants have violated California compensation laws,
4 thereby depriving class members of money earned. Based on the facts set forth above, it would
5 be impracticable to proceed in individual actions.
- 6 57. Plaintiff suffered an injury-in-fact pursuant to Business & Professions Code section 17204, and
7 lost money as a result of Defendants’ illegal and/or unfair practices.
- 8 58. Plaintiff brings this action on behalf of an ascertainable class who share a community of
9 interest pursuant to Business & Professions Code section 17203 and Code of Civil Procedure
10 section 382 and who share a common or general interest in the damages as a result of the
11 illegal and/or unfair practices, in that those individuals on whose behalf the action is brought
12 have also lost money as a result of Defendants’ practices, as set forth above, and that it would
13 be impracticable to proceed as an individual plaintiff action.
- 14 59. As set forth above, during the course of Plaintiff’s employment, Defendants failed and refused
15 to properly pay Plaintiff and all other class members. Defendants also failed to comply with
16 fundamentally protective California laws including, but not limited to, Labor Code sections
17 201-203, 226, 226.7, 510, 512, 1194, and 2802, as well as IWC Wage Order 4, or any other
18 applicable Wage Order.
- 19 60. Business & Professions Code section 17200 *et seq.* prohibits any unlawful, unfair, or
20 fraudulent business act or practice.
- 21 61. Plaintiff’s allegations herein are based upon Defendants’ institutional business acts and
22 practices.
- 23 62. Defendants’ acts and practices, as described herein above, are unlawful and unfair, in that they
24 violate the Labor Code and IWC Wage Order(s).
- 25 63. As a direct result of Defendants’ unlawful and unfair business acts and practices, Plaintiff and
26 all other class members have been denied wages earned, and have therefore been damaged in
27 an amount to be proven. Accordingly, Plaintiff prays for restitution and injunctive damages
28 in an amount to be proven.

1 64. Plaintiff is informed and believes, and on that basis alleges, that Defendants' unlawful and
2 unfair business practices, alleged above, are continuing in nature and are widespread.

3 65. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against
4 Defendants to enjoin them from continuing to engage in the illegal conduct alleged herein.

5 66. On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.

6 67. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees. Plaintiff is
7 presently unaware of the precise amount of these expenses and fees, and prays for leave of
8 court to amend this complaint when the amounts are more fully known.

9 **SIXTH CAUSE OF ACTION**
10 **Violation of Labor Code § 2698 et seq. - Representative Action**
(By Plaintiff in a Representative Capacity, Against Defendants and DOES 1 through 10)

11 68. Plaintiff hereby incorporates by reference paragraphs 1 through 67 as though fully set forth
12 herein.

13 69. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial
14 Welfare Commission Wage Orders of the State of California, including, but not limited to,
15 California Labor Code section 2698 *et seq.*

16 70. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were
17 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
18 Defendants' standard practices. Said violations were set forth in the causes of action above and
19 are re-stated below.

20 71. Plaintiff has exhausted her administrative remedies and pre-filing requirements pursuant to
21 California Labor Code section 2699.3, and has also fulfilled all notice requirements under the
22 statute. To wit, on January 6, 2020, counsel for Plaintiff prepared and electronically submitted
23 a letter to the California Labor & Workforce Development Agency ("LWDA") via the
24 California Department of Industrial Relations' "PAGA Filing" website. A copy of the letter
25 was also mailed to Defendants, via USPS Certified Mail. The letter contained the specific
26 provisions of the California Labor Code violated by Defendants, as well as the facts and
27 theories in support of Plaintiff's claims. (Please see **Exhibit 1**)

28 72. The statutory time period for the LWDA to investigate and/or respond, and for the Defendant

employers to respond, has concluded, allowing Plaintiff to proceed with this litigation.

73. At all times mentioned herein, Defendants were and are “employers” as that term is used within the relevant sections of the California Labor Code.

74. Throughout the Class Period, Defendants committed the above-referenced and incorporated Labor Code and Wage Order violations against Plaintiff and the other employees. To wit, throughout their employment, Plaintiff and all other class members were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code sections 510 and 1194. Plaintiff and the other class members were and are denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*, IWC Wage Order 4 (or any other applicable Wage Order) and Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse Plaintiff and other class members for necessary business expenditures in violation of, *inter alia*, Labor Code section 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.

75. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with the pre-filing requirements, Plaintiff may recover the penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief

76. As a direct result of Defendants’ failure to comply with the provisions of the Labor Code and orders of the commission, Plaintiff and other employees of Defendants have been damaged in an amount to be proved at trial.

77. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

78. Plaintiff also seeks an award of reasonable attorneys’ fees and costs pursuant to Labor Code section 2699(g)(1).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff on her own behalf and on behalf of all members of the proposed Class, prays for judgment as follows:

1. For an order certifying the proposed class(es);
2. For compensatory damages according to proof, as set forth under Labor Code sections 510, 1194, and 2802, among other statutes;
3. For penalties and restitution of wages according to proof, as set forth under Labor Code sections 221, 226, 226.7, 450 and 1197.1, among other statutes;
4. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 4 (or any applicable Wage Order);
5. For lost back pay in an amount to be proven;
6. On behalf of the ascertainable Class, for a permanent injunction against Defendants restraining, preventing, and enjoining Defendants from engaging in the illegal practices alleged, and to ensure compliance with, among other employee protections, Labor Code sections 226, 226.7, 510, 512, 1197, and 2802;
7. On behalf of the ascertainable Class, for restitution damages on behalf of the section 17200 claimants who share a common or general interest;
8. Where available, for liquidated damages pursuant to Labor Code section 1194.2;
9. For an award of interest, including prejudgment interest, pursuant to Labor Code section 218.6;
10. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code sections 218.5, 226, 1194, 2802 and Code of Civil Procedure section 1021.5; and
11. For such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

Dated: December 7, 2021

SULLIVAN & YAECKEL LAW GROUP, APC

Eric Yaeckel

Eric K. Yaeckel
Ryan T. Kuhn
Attorneys for Plaintiff TAMARA WHITMER, on behalf of
other members of the public similarly situated

Exhibit 1

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

January 6, 2020

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Tamara Whitmer v. USP Mission Hills, Inc., et al.
Our File Number: 7161

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by USP Mission Hills, Inc. (“USP”), in the above referenced matter.

This “written notice” is filed on behalf of Ms. Tamara Whitmer and all non-exempt employees employed by USP. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by USP are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 1194 and 2802, as well as IWC Wage Order 4 or any other applicable wage order, codified as Title 8, California Code of Regulations, section 11040 et seq.

Facts and theories supporting the allegations: Our client, Tamara Whitmer, worked as a non-exempt employee for USP from October 2, 2017 through October 2019.

Throughout the term of her employment, USP required Ms. Tamara Whitmer, and all other non-exempt employees, to experience actions illegal under the California Labor Code, including the following:

Failure to Provide Compliant Meal Periods

- USP failed to provide compliant meal periods or requisite meal period penalty payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage

Order 4.

- For example, USP does not possess a legal meal period policy, and makes no attempt to ensure that its employees are either timely or wholly provided meal periods. The employees would often either miss a meal period entirely, be provided a short or untimely meal period. USP would pressure its employees to either skip, or cut short, a meal period as employees were expected to respond to supervisors and remain on the premises. Over the course of her employment, Ms. Whitmer was instructed numerous times to remain available during her meal periods. USP has never provided a compliant meal period penalty payment to any employee on the above referenced instances.
- USP illegally retained control over its employees during Meal Periods. For example, USP required Ms. Whitmer and other employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- USP failed to provide compliant rest periods or requisite rest period penalty payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage Order 4. For example, USP does not possess a legal rest period policy and makes no attempt to ensure that its employees are either timely or wholly provided rest periods. The employees would often either miss a rest period entirely, be provided a short or untimely rest period, or be provided only one rest period, even when they were working in excess of 6.5 hours a day. USP would pressure its employees to either skip, or cut short, a rest period as employees were expected to respond to supervisors at all times. USP has never provided a compliant rest period penalty payment to any employee on the above referenced instances.
- USP illegally retained control over its employees, during Rest Periods. For example, USP required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Minimum Wage and Overtime Violations

- USP failed to provide all compensation, including minimum wage and overtime compensation, to its employees in violation of, inter alia, Labor Code sections 1194 and 510 and the IWC Wage Order 4. This illegal action is due, in part, to USP’s policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, USP would instruct Ms. Whitmer to report her scheduled (as opposed to actual) work hours, resulting in a loss of compensation. Additionally, USP would often require Ms. Whitmer to work extended hours (beyond her

scheduled hours), without compensation.

- Finally, USP failed to properly calculate the legal Overtime Rate of Pay, by (among other issues) failing to consider certain non-discretionary forms of compensation (including, but not limited to bonuses).

Wage Statement Violations

- USP violated Labor Code section 226(a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, USP (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when due.
- USP violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Whitmer and the other employees were not compensated for all hours worked (due in part to USP's requirement for employees to list only scheduled work-times, not actual work-times.)
- USP violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, USP (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period Penalties when due.
- USP violated Labor Code section 226(a)(8) by failing to provide an accurate showing of the name and address of the legal entity that is the employer.
- USP violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates, in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Ms. Whitmer and the other employees were not compensated for all hours worked.

Failure to Provide Compliant Expense Reimbursement Payments

- USP failed to provide compliant expense reimbursement payments in violation of, inter alia, Labor Code section 2802, by failing to provide payments for expenses incurred by Ms. Whitmer and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, and mileage.

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Willful Failure to Provide All Compensation to Ex-Employees

- USP failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that USP failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above. Ms. Whitmer was terminated in October, 2019, and did not receive all wages due and owed to her.

To confirm, the USP entity is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Andrea J. Torres-Figueroa, Esq.

cc: Via Certified U.S. Mail

Human Resources Director
Providence Summit Surgery Center
26357 McBean Parkway, Suite 100
Santa Clarita, CA 91355

Human Resources Director
USP Mission Hills, Inc.
15305 Dallas Pkwy, Suite 1600
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CT Corporation System
Agent for Service of Process for USP Mission Hills, Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

cc: Courtesy Copy and Filing Fee via U.S. Mail
Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave., 10th Floor
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