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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: August 17, 2022

Time: 10:00 am

Dept.: 11

Judge: Hon. David S. Cunningham

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

25 6. A stipulation to file a Third Amended Complaint is being filed by the parties as part of
26 Settlement as, as the Second Amended Complaint inadvertently omitted claims for violations
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of Labor Code §§ 201-203.

7. On June 8, 2020, Plaintiff Whitmer propounded her first set of written discovery requests of 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.

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

9. 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

10. 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.

11. Prior to the mediation, Defendant produced a 25% random sample of class member time and wage records, in addition to a detailed information about the parameters of the class and PAGA groups. Based on Plaintiff's counsel significant experience, detailed below, and consultation with an expert witness, Plaintiff maintains this sample size was statistically significant for purposes of estimating the total violations across the class.

12. 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

- 1 Members time and wage records.
- 2 13. Our office also interviewed numerous other putative class members during the course of the
- 3 litigation.
- 4 14. The parties were able to reach a tentative agreement on the key terms of settlement at
- 5 mediation. Negotiations over the final terms continued.
- 6 15. As of November 29, 2021 the parties finalized and executed a Joint Stipulation re: Class
- 7 Action Settlement (the “Agreement”), which contains all of the parties’ agreed upon terms. A
- 8 true and correct copy of the Agreement is attached as **Exhibit 1**.
- 9 16. Within the Memorandum, our office has provided the specific number of class members
- 10 receiving a portion of the settlement, and the net settlement amount. The average recovery per
- 11 class member was calculated as follows: **\$178,250** (net settlement amount after projected
- 12 contingent costs) - **divided by 207** (number of class members) = **\$861.11**.
- 13 17. It was determined that this Settlement with a guaranteed payout now, was in the best interests
- 14 of the class given Defendant’s posited defenses, and the likelihood of an appeal regardless of
- 15 which party prevailed. The parties agree the Net Settlement Amount as set forth in the
- 16 Agreement is fair, reasonable, and adequate
- 17 18. Each of the primary claims also had risks to obtaining both class certification and liability. If
- 18 Defendants’ asserted defenses were successful, the class would not receive anything. Plaintiff
- 19 maintains this recovery was significant in light of the circumstances of the case. As is set forth
- 20 below, Plaintiff submits that the most realistic “best case” scenario would be an average
- 21 recovery per class member of approximately \$1,815.54 and a worst case scenario would be a
- 22 recovery of \$0, by way of denial of class certification of the class or a defense verdict.
- 23 **Claims and Issue and Potential Liability**
- 24 19. Plaintiff’s meal period claims were centered on USP’s time records and policies which
- 25 Plaintiff alleged, showed violations of California Law. Defendants argue that even if there were
- 26 late or missing meal periods shown on the time records, that USP had properly “provided” the
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- 1 opportunity for a meal period.
- 2 20. Plaintiff's rest period claims alleged that USP's policies restricted employees from taking rest
- 3 periods, as employees were not allowed to leave the premises during breaks, and rest period
- 4 premiums were not paid. Defendant argued that in practice no such "leave the premises"
- 5 restriction was ever enforced, and was willing to provide witnesses to testify to such a
- 6 representation. Defendants also contend individualized inquiries will abound as to why
- 7 individual employees may have failed to take appropriate rest periods.
- 8 21. Plaintiff's unpaid wages (and unpaid overtime) claims were centered around the fact that
- 9 employees were performing unpaid work during meal and rest periods, and USP failed to
- 10 accurately calculate the regular rate of pay and overtime by using an illegal rounding practice.
- 11 Plaintiff alleged this resulted in regular time and overtime pay being owed where Defendants
- 12 were on notice of work being performed outside the scheduled hours. Defendants were
- 13 defending these claims on the grounds that the lack of accurate start and end times did not
- 14 necessarily evidence Labor Code violations, and that proving up these violations could
- 15 necessitate individual inquiries, which could preclude class certification and make any PAGA
- 16 claims unmanageable.
- 17 22. Plaintiff contends Defendants also violated Labor Code § 226 on multiple grounds in that it
- 18 failed to provide accurate information on the Wage Statements provided to employees.
- 19 However, Plaintiff acknowledges that these claims were largely derivative, in that both the
- 20 gross and net wages would be inaccurate due to the above-referenced claims. Defendants argue
- 21 that the failure to list gross and net wages are derivative of other claims that may ultimately fail
- 22 and as a result there is no "knowing and intentional failure" to list information, which is what
- 23 triggers liability under Labor Code § 226 (e).
- 24 23. Plaintiff contends Defendants violated Labor Code § 2802 by failing to reimburse its
- 25 employees for, *inter alia*, cellular phone costs. Specifically, Plaintiff argued Defendants
- 26 required employees to call in if they are to be absent or late, but are not reimbursed for such
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1 expenses. Plaintiff contends that California law requires reimbursement to these employees
2 whenever a cell phone is used in such a manner. See e.g. *Cochran v. Schwan's Home Service,*
3 *Inc.*(2014) Cal.App.4th 1137. Defendants argued that *Cochran* is distinguishable because the
4 policy in this case does not require employees to use their cellular phones. Defendants also
5 argue that individualized inquiries regarding the use of cellular phones would predominate and
6 bar class certification.

7 **24. Valuation of the Claims**

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

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

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

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

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

19 **"PAGA" Violations: 5** (separate Labor Code violations) x **4,075** (pay periods at issue) x
20 **\$100.00** (per violation per the statute) x .25 (violation rate) = **\$509,375.**

21 Based on the above, a best case recovery (which would be admittedly unlikely, given the
22 factors set forth below) would be a total judgment for class action damages of \$1,043,937.10.
23 However, given the likelihood of the Court ruling that no duplicative penalties can be
24 recovered, our office would realistically discount the amount we are asking by approximately
25 15% to 626,363.26. This number would then be discounted approximately 40% (to
26 \$375,817.95) to account for all contingent costs, including attorneys fees and all costs of
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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. The bid also includes a settlement website (url pending) to post updates and final judgment. Phoenix's sole business has been the administration of class action settlements and class action notices, an area in which it has extensive experience. (See also <http://www.phoenixclassaction.com/> for additional experience and qualifications). The parties agreed upon Notice is attached to the Settlement agreement as Exhibit A. Defendant has represented that all of its employees are fluent in English, making a an English only notice appropriate.

28. Plaintiff executed a separate individual settlement agreement and release. This amount being paid to Plaintiff is separate and apart form 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.
30. The parties have already stipulated to add Class Action claims as Defendant had a desire to settle all PAGA claims, as well as the underlying wage and statutory violations claims. However, if not for this settlement, any request by Plaintiff to certify a class would have been heavily contested by Defendant. Therefore this class action settlement is a superior result for both parties. In exchange for a full release, Class members are given a guaranteed monetary recovery now. Defendant is also able to “buy the peace” and avoid the costs of defending all future proceedings.
31. Our office has considerable experience in wage and hour and class action litigation. Trial Attorney, William Sullivan has over 26 years of experience, 24 years of which has been devoted to both prosecuting and defending class action litigation. I have over 11 years of experience all of which have been dedicated to class action and representative action (PAGA) litigation.
32. Both California and Federal Courts have repeatedly found our firm to be “Qualified Counsel” in class action cases. Listed below is a just a small sampling of the matters I have worked on in which this firm, has been found to be Qualified to act as Class Counsel on a Class Action matter either by stipulation of the parties, or by specific Court Order after a contested hearing.
- Aleksick v. 7-Eleven, et al.; Imperial County Superior Court Case #ECU03615;

- Aleksick v. Tucker, et al.; Imperial County Superior Court Case #ECU03615 and U.S. District Court-Southern District-Case#08-CV-59;
- Aguirre v. CLK; Imperial County Superior Court Case # ECU000765;
- Ballesteros v. Sharp Hospital, et al.; San Diego Superior Court Case #37-2009-00090532-CU-OE-CTL;
- Bactoctoy v. Standard Parking Corporation; San Diego Superior Court Case #37-2013-00081800-CU-OE-CTL;
- Best v. Gap (Rosales is our client); Los Angeles Superior Court Case # BC717340;
- Burzynski v. Wawanesa General Insurance Company, et al; San Diego County Superior Court Case # 37-2011-00085450-CU-OE-CTL;
- Brandt v. Utopia Management Inc.; San Diego Superior Court Case # 37-2012-00086208-CU-CO-CTL;
- Carlson v. Dynamic Claims, et al.; Orange Superior Court Case # 30-2008-00180032;
- Castillo v. Apple Core, et al.; Imperial County Superior Court Case # ECU05395;
- Castro v Plantronics; San Diego Superior Court Case# 37-2015-00014970-CU-OE-CTL;
- Cendejas v. Guard Management Inc.; San Diego Superior Court Case# 37-2011-000868690-CU-OE-CTL;
- Clark v. Ann Taylor; San Diego Superior Court Case# 37-2019-00013185-CU-OE-CTL;
- Doyle v. Fireman's Fund Insurance Company, Marin County Superior Court, Case No. 1401441;
- Donohue v. AMN; San Diego Superior Court Case# 37-2015-00029010-CU-OE-CTL;
- Felarca v. IRAM, et al.; San Diego Superior Court Case#37-2008-00092465-CU-OE-CTL;
- Garcia v. DH Del Mar; San Diego Superior Court Case#37-2017-00002307-CU-OE-

CTL;

- Gober v. Jamba Juice; San Diego Superior Court Case# 37-2019-00044167-CU-OE-CTL;
- Gonzalez v. Century Painting; San Diego Superior Court Case#37-2016-00028356-CU-OE-CTL;
- Harris v. FP Stores, Inc.; Los Angeles Superior Court Case # BC 396571;
- Hernandez v. Spectrum; San Diego Superior Court Case # 37-2018-00048710-CU-OE-CTL;
- Higgins v. Huntleigh USA, et al.; San Diego Superior Court Case#37-2008-00076708-CU-OE-CTL;
- Jack v. Hartford Fire Insurance Company; U.S. District Court-Southern District-Case # 09-cv-1683-MMA (JMA);
- Jones v. Jacob Healthcare, et al.; San Diego Superior Court Case # 37-2007-00081375-CU-OE-CTL;
- Kitchen v. San Diego Blood Bank, et al.; San Diego Superior Court Case # 37-2019-00001533-CU-OE-CTL;
- Larios v. General Coating Inc.; San Diego Superior Court Case # 37-2010-00097512-CU-OE-CTL;
- Lemus v. Denny's Inc.; Southern District of California, Case No. 10-CV-2061;
- Mariscal v. Fuller; San Diego Superior Court Case# 37-2016-00033575-CU-OE-CTL;
- Morris v. Aaron Bros., et al.; San Diego Superior Court Case# GIC 857019;
- Ortiz v. Dunn; Riverside Superior Court Case # RIC 1827117;
- Ortiz v. CHC; San Diego Superior Court Case# 30-2017-00931909-CU-OE-CXC;
- Nieder v. Bridgepoint; San Diego Superior Court Case# 37-2016-00034704-CU-OE-CTL;
- Patton v. Alvarado Hospital; San Diego Superior Court Case # 37-2011-00090769;

- 1 • Paguaga v. JRK; Sonoma County Superior Court Case SCV-265444;
- 2 • Ramirez v. Tom Gonzales; Orange County Superior Court Case# 30-2017-00960135-
- 3 CU-OE-CXC;
- 4 • Rasmussen v. Customized Service; San Diego Superior Court Case # 37-2020-
- 5 00008581-CU-OE-CTL;
- 6 • Sagaz v. North Island, et al.; San Diego Superior Court Case#37-2009-00099913-CU-
- 7 OE-CTL;
- 8 • Santy v. Vons Federal Employee Credit Union; San Diego Superior Court Case # 37-
- 9 2011-00086134-CU-OE-CTL;
- 10 • Silva v. Banco Popular, et al.; U.S. District Court-Eastern Division-Case#CV 08-
- 11 06300-JFW (AGRx);
- 12 • Silva v. See's Candies, et al.; San Diego Superior Court Case#37-2009-00100692-CU-
- 13 OE-CTL;
- 14 • Soto v. Rancho Valencia; San Diego Superior Court Case#37-2019-00017152-CU-OE-
- 15 CTL;
- 16 • Stevens v. Bridgepoint Education Inc. et al; San Diego Superior Court Case # 37-2011-
- 17 00086135-CU-OE-CTL;
- 18 • Strickman v. Laidlaw Transit, et al.; San Diego Superior Court Case#37-2007-
- 19 00075528-CU-OE-CTL;
- 20 • Tapia v. Zales;Imperial County Superior Court Case # ECU000765;
- 21 • Toralba v. Rite Aid; San Diego Superior Court Case#
- 22 37-2017-00041583-CU-OE-CTL;
- 23 • Vega v. Scoobeez; San Diego Superior Court Case# 37-2017-00018285-CU-OE-CTL;
- 24 • Waters v. Advent, et al.; U.S. District Court-Southern District-Case #07CV2089
- 25 (BTM) (LSP);
- 26 • Widzer v. Capella; Orange County Superior Court Case # 30-2019-01056029-CU-OE-
- 27
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CXC; and

- Wells v. Washington Inventory Service, Inc.; San Diego Superior Court # 37-2009-00096488-CU-OE-CTL.

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

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

35. Pursuant to the Settlement Agreement, the release is effective as of the date of final approval. The class notice is consistent with this in informing class members their claims will be release as of final approval if they do not-opt out. Accordingly, the class is fully apprised of the release and anyone who does not opt-out will not be prejudiced, as they will have already made the choice not to retain their own claims. The Settlement will be funded promptly (21 days) after final approval. The administrator will shortly thereafter mail the checks.

36. Plaintiff is aware of this Court's instruction to follow the Complex Civil Department Checklist for Preliminary Approval of Class Action Settlement. Should it assist the Court, Plaintiff has attached as **Exhibit D**, a copy of the checklist, with Plaintiff's written additions of where the requested information is located in the papers.

I declare under penalty of perjury, under the laws of the State of California , that the foregoing is true and correct. Executed on this 27th day of May, 2022.

Eric Yaeckel

ERIC K. YAECKEL

EXHIBIT 1

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Attorneys for Plaintiff TAMARA WHITMER

**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

Exhibit B, including any revisions required by the Court.

x) Released Parties. The term “Released Parties” shall mean and refer to Defendant and all of Defendant’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.

y) Second Amended Complaint. The term “Second Amended Complaint” shall mean and refer to the Second Amended Complaint to be filed to add Class claims, which is on file with the Court.

z) Settlement Administrator. The term “Settlement Administrator” shall refer to 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.

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

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

2. Date Of This Stipulation. This Stipulation is made as of the date set forth below by 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

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

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

V. RELEASES

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

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,

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,

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

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

28. Motions By Class Counsel.

a) Motions Required For Final Approval Of The Settlement. Class Counsel shall timely prepare, subject to Defendant's review and right to comment, Final Settlement Papers in conformance with the terms of this Settlement, including (1) a motion for final approval of the Settlement; (2) a motion for award of attorneys' fees and costs; (3) a motion for the Class Representative's enhancement award; (4) the [Proposed] Final Settlement Order; and (5) any other documents, petitions, or motions required to effectuate this Settlement – including, but not limited to, any additional proposed orders requested by the 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, which added Class
17 claims against Defendant for meal period violations, rest period violations,
18 minimum wage violations, overtime violations, wage statement violations,
19 failure to reimburse, failure to pay wages upon termination, and unfair
20 business practices, and deeming it filed as of the date of Preliminary
21 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,

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

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

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

X. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

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

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

32. Provision Of Final Settlement Approval Order And Judgment To Settlement 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 The Second Amended Complaint, to be deemed the operative complaint in this matter as of the
14 date that the Preliminary Approval Order is entered. If, for any reason, the Settlement is not
15 approved and/or final approval is not granted as anticipated in this Stipulation, Defendant reserves
16 the right to object to the addition of Class claims against Defendant.

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

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

21 56. Binding Agreement. The Parties intend that this Settlement shall be fully
22 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
23 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
24 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.

1 DATED: _____, 2021
2

3 By: _____
4 Tamara Whitmer

5 Plaintiff and Class Representative

6 DATED: NOVEMBER 29, 2021
7

USP MISSION HILLS, INC.

8
9 By: Eru Boon
10 Name

11 Title

12 DATED: _____, 2021
13

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

15
16 By: _____
17 William B. Sullivan
Eric K. Yaeckel

18 Attorneys for Plaintiff TAMARA WHITMER

19 DATED: _____, 2021
20

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

22
23 By: _____
24 Evan R. Moses
Jennifer L. Katz

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

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

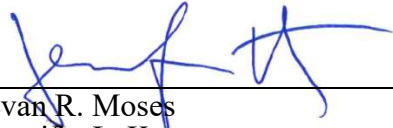
13 OGLETREE, DEAKINS, NASH, SMOAK &
14 STEWART, P.C.

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 David S. Cunningham DEPARTMENT: 11 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 11 of the Los Angeles County Superior Court, located at the Spring Street Courthouse, 312 N Spring St, Los Angeles, CA 90012, 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 can 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. You may also object without submitting anything at the Final Approval Hearing. Mail the objection to the Settlement Administrator at [redacted] or fax 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.) You may also visit the Settlement Administrator Website at [redacted] for additional updates and information.

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 August 17, 2022, 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**.
4 Having considered the Settlement, all papers and proceedings held herein, and having reviewed
5 the entire record in this action, Case No. 20CHCV00209, entitled *Tamara Whitmer v. USP*
6 *Mission Hills, 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.

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

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8 DATED: _____

9 Hon. David S. Cunningham
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 David S. Cunningham , Dept.
11]

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. David S. Cunningham
8 Los Angeles County Superior Court Judge
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EXHIBIT D

LOS ANGELES SUPERIOR COURT, COMPLEX CIVIL DEPARTMENT

CHECKLIST FOR

PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

The purpose of this checklist is to provide direction on what information and argument the court requires to grant a motion for preliminary approval. The court urges the moving parties to carefully review the checklist and fully comply with each item that applies to your case. The court requests the content of the motion follow the same order as this checklist, since that is how the judge and research attorney review the motion.

I. MOVING PAPERS (Motion and Declarations)

All facts submitted for the court to consider must be provided in the form of a declaration or other admissible evidence. The court will not consider facts stated only in the motion.

A. Introductory Information

- ☒ Summary of the litigation, including identity of the parties, brief procedural history, and claims asserted. See Memo at § II

B. Dunk/Kullar Analysis

- ☒ Summary of the investigation and discovery conducted, including the specific documents reviewed prior to agreeing to settle the case. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, as modified Sept. 30, 1996 (*Dunk*)). If counsel's analysis was informed by a data sample, was it statistically significant? See Yaeckel decl. at para. 7-13 and para.10 re sampling.
- ☒ Summary of settlement negotiations, including when the settlement was reached, and whether the parties were assisted by a mediator. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)
See Yaeckel decl. at para. 10-13
- ☒ A summary of Class Counsels' experience and a listing of all prior cases on which Class Counsel has acted as lead or co-counsel. (See *Dunk, supra*, 48 Cal.App.4th at p. 1802.)
See Yaeckel decl. at para. 32
- ☐ Summary of the case, including the legal and factual basis for each claim. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) Memorandum at § III
- ☒ A summary of the risks, expenses, complexity, and duration of further litigation if the settlement is not approved. Memorandum at § VI(C), (D)
- ☒ A summary of the risks of maintaining class action status.

☐ Information sufficient for the court to make an independent determination that the consideration being received for the release of class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) This discussion should specify the maximum recovery of each claim asserted in the operative complaint, defenses asserted by Defendant, and any other relevant factors justifying the amount offered in settlement.

Memorandum at § III at Yaeckel decl. at para. 19-28

C. Class Certification

☒ Numerosity: Total number of members in the settlement class and number of members in each sub-class (if applicable).

Memorandum at § V(B)

☒ Ascertainability: The manner by which members of the class will be identified and when. (*Noel v. Thrifty Payless* (2019) 7 Cal.5th 955.)

Memorandum at § V(A)

☒ Community of Interest: Discuss whether class representatives have claims or defenses typical of the class and can adequately represent the class. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Memorandum at § V(C),(D)

D. Claim Requirement (if applicable) Not Applicable, No Claim Requirement

☐ If class members are required to submit a claim to receive compensation, explain why a claim form is necessary and either 1) provide an estimate of the anticipated claims rate or 2) provide an explanation why a claims rate cannot be provided.

☐ Provide a detailed explanation why a "claims made" settlement is appropriate in this case.

☐ Indicate what actions class counsel will take to encourage claim submission.

☐ Explain why the claims process is not so burdensome that relief would be inaccessible to class members (if applicable).

E. Miscellaneous

☒ Explain why the settlement includes terms that are outside the scope of the operative complaint. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.)

Not applicable

☒ If notice will be given in English only, explain why this is sufficient.

Yaeckel decl. para 27

☐ A statement of any affirmative obligations to be undertaken by the class member or class counsel and the reason for such obligations.

Not applicable, unless a Class Member wants to opt-out or object as specified in the notice

☐ Provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)

Not applicable

☐ Any agreement that has injunctive relief against a class representative is not appropriate in a class action case. Provide the authority and factual reasons why this case is an exception.

Not applicable

II. SETTLEMENT AGREEMENT

The settlement agreement should address the following:

A. The Basics

☒ Class definition.

See Ex. 1, sec. I(e)-(f)

☒ Class and Release Period: Will the class and release periods extend beyond the preliminary approval? If yes, please explain.

No, class period ends at December 31, 2021

B. Release of Claims

☒ Scope: The scope of any release given by class members must be defined with precision and clarity. Any released claims not presented directly in the complaint must be based on the facts alleged in the complaint.

See Ex. 1 sec (V) p. 10

☒ A Civil Code section 1542 waiver is generally not appropriate in a class action case as to the putative class members (if applicable). Provide the authority and factual reasons why this case is an exception. (*Israel-Curley v. California Fair Plan* (2005) 126 Cal.App.4th 123, 129; *Salehi v. Surfside III Condominium Owners' Assn.* (2011) 200 Cal.App.4th 1146, 1159–1161.)

No complete section 1542 waiver, partial waiver only limited to claims alleged. Ex. 1 sec V(16).

☒ Release Effective Date: Indicate the point in time at which the release will be deemed effective as to the absent class members. If the release will be effective before settlement funds are paid, explain why this is in the best interest of the class.

See Yaeckel decl. para. 35

☐ Class Data: If there are confidentiality provisions, explain why they are in the best interest of the Class and whether they will impede Class Counsel's ability to discharge fiduciary duties.

Not applicable

C. Monetary Terms of Settlement

☒ Settlement Amount: Indicate the amount of the gross settlement, how and when the settlement will be paid, and information regarding payment plan, if any.

Ex. 1 at sec. VI, p. 12

☒ Deductions from the settlement fund: Indicate the amounts to be deducted from the gross settlement for attorneys' fees and costs, plaintiff incentive awards, administrative costs, PAGA payment and allocation of award to LWDA and the parties, and any other existing deductions.

Ex. 1 at sec. VI, p. 12-15

☐ If there are subclasses, explain why the monetary distribution is fair to each subclass. Is there a class representative who fits the definition of each subclass?

Not applicable

☒ Explanation as to any extraordinary services provided and why the class representative enhancement is reasonable, including what the class representative did beyond the expected

services of any class representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.) **Yaeckel decl. at para. 29**

☒ Information about how attorney fees will be calculated. The percentage method, with or without a lodestar cross-check, may be used in common fund cases. (*Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503.) In other cases, counsel should fully brief how the fees are calculated. **Percentage Method, see Exhibit 1 at 19(a)**

☒ If wages are involved, how will Defendant's share of taxes be paid? **Exhibit 1 at 19(h)**

☐ Whether, and under what circumstances, amounts may revert to Defendant, and a justification for such reversion (if applicable). (*Cundiff v. Verizon California, Inc.* (2008) 167 Cal.App.4th 718, 728–729.)

not applicable

☐ Payment Formula: Amount and manner of distribution of the compensation to each class member, including the estimated amount each class member will receive and the timeline on which payments will be issued. **Ex. 1 at 9(g), 21(i)**

☒ Tax allocation of settlement payments. **Ex. 1 at 21(g)**

☐ Nature of injunctive relief (if any), and valuation of such relief.

Not applicable

D. Notice Administration

The following issues regarding notice administration should be addressed in the settlement agreement. A copy of the proposed notice must be attached to the settlement agreement as an exhibit.

☒ Who is the administrator for the settlement? **Phoenix - See Yaeckel decl para. 27**

☒ Provide the qualifications and experience of the Administrator.

Ex. 1 at para. 21, 26

☒ How/when will the administrator receive the class list?

☒ Will the list be updated by the administrator prior to the initial mailing? **Ex. 1 at para. 21, 26**

☒ What is the deadline for the initial issuance of notice to class members? **Ex. 1 at para. 21, 26**

☒ Does the content of the notice comply with California Rules of Court, rule 3.766(d)?

Memo p. 122-12, Ex. A to the Agreement

☒ Does the notice accurately reflect the Court's current social distancing procedures for attendance at hearings and review of court files? (Counsel should check the Court website for most current information.) **Ex. A at p. 5**

- ☒ How will payments be processed? Ex. 1 at para. 21(e)
- ☒ How will notices returned to the administrator as undeliverable be handled? Ex. 1 at para. 21(c)
- ☒ How will re-mailed notices, if any, be handled? Ex. 1 at para. 21(c)
- ☒ How will you give notice of any change of the date or location of the hearing? Yaeckel decl. para. 27
- ☒ Will there be a settlement website? If so, provide the URL. Yaeckel decl. para. 27
- ☒ Will there be publication notice? If so, indicate the timing, locations, and manner by which publication notice will be disseminated. Not applicable
- ☒ How will notice of final judgment be given to the class? (Cal. Rules of Court, rule 3.771(b)) (e.g. Posted on claims administrator's website.) Yaeckel decl. para. 27
- ☒ Confirm the settlement agreement and notice are consistent. Compare Ex. 1 and Ex. A thereto

E. Responses to Notice

- ☒ Description of the procedures for submitting written objections, requests for exclusion, claim forms (if applicable) and disputes to estimated payments. Ex. A at p. 4-5
- ☒ What is the deadline to submit objections, requests for exclusion, claim forms (if applicable), and/or disputes to workweeks? Is this deadline reasonable? Will class members who receive re-mailed notices be given an extension? Ex. A at p. 4-5
- ☒ Consider making the objection procedure the same as the opt-out procedure, with the only requirement being that objections be mailed to the settlement administrator and not filed with the court. Ex. A at p. 5
- ☒ Delete all language indicating that class members may only be heard at final approval if they have complied with all objection procedures or that they must use specific language to request exclusion. The court will hear from any class member who attends the final approval hearing and asks to speak regarding his or her objection. Modify the notice accordingly. Ex A p. 5

F. Cy Pres Distribution

- ☒ Indicate the length of time from issuance for which settlement checks will remain valid. Ex. 1 para. 1(b)
- ☒ Identify the fund to which uncashed checks will be directed and detail the steps that will be taken to ensure compliance with Code of Civil Procedure section 384, as modified in 2018. Ex. 1 at para. 20
- ☐ Why does such distribution fill the purposes of the lawsuit or is otherwise appropriate? (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 472; *In re Microsoft I-V Cases*)

(2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc.* (9th Cir. 2011) 663 F.3d 1034, 1038–1041; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865; Code Civ. Proc., § 384.)

☒ Provide declarations disclosing the interest or involvement by any counsel or party in the governance or work of the cy pres recipient. **not applicable**

III. EXHIBITS TO THE MOTION

☒ Provide proof of submission of the proposed settlement agreement to the LWDA. (Lab. Code, § 2699, subd. (l)(2).) **See attached proof of Service**

☒ Proposed Judgment should not include a dismissal or any findings not contained in the Final Approval Order. (Cal. Rules of Court, rule 3.769(h).) **Ex. C to Yaeckel decl.**

August 2020