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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

15 FERNANDO ALCOCER, JR., an individual,
16 on behalf of himself and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 vs.

20 DSV SOLUTIONS, LLC, a Limited Liability
21 Company; and DOES 1 through 50,
22 inclusive,

23 Defendants.

CASE No. **CIVDS2010345**

[Consolidated with case no. CIVDS2018614]

**DECLARATION OF NORMAN B.
BLUMENTHAL IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: April 26, 2022

Hearing Time: 10:00 a.m.

[Hearing Set by Order dated December 1, 2021]

Judge: Hon. David Cohn
Dept: S26

Date Filed: June 2, 2020

Trial Date: Not Set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiffs Fernando Alcocer ("Plaintiff") in this matter. As such, I
4 am fully familiar with the facts, pleadings and history of this matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein.

7 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
8 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
9 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
10 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter
11 at Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience
12 in the areas of employment class actions, unfair business practices and other complex litigation. The
13 attorneys at my firm have extensive experience in cases involving labor code violations and overtime
14 claims. Class Counsel has litigated similar overtime cases against other employers on behalf of
15 employees, including cases against Securitas, El Pollo Loco, Total Renal, Panda Express, Walt Disney
16 Resorts, Pharmaca, Nortek Security, California Fine Wine, Solarcity, Space Exploration, Union Bank,
17 Marriott, Apple, Wells Fargo, Kaiser, Universal Protection Services, and AAA. Class Counsel have
18 been approved as experienced class counsel during contested motions in state and federal courts
19 throughout California. It is this level of experience which enabled the firm to undertake the instant
20 matter and to successfully combat the resources of the defendants and their capable and experienced
21 counsel. Class Counsel have participated in every aspect of the settlement discussions and have
22 concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.

23
24 3. Summary of the Proposed Settlement.

25 (a) A true and correct copy of the Class Action Settlement Agreement (the "Agreement")
26 between the parties is attached hereto as Exhibit #2.¹ Plaintiff and Defendant DSV Solutions, LLC.

27
28 ¹ Capitalized terms are defined in the Agreement.

1 (“Defendant”) reached a full and final settlement of the above-captioned action, which is embodied in
2 the Agreement filed concurrently with the Court. Pursuant to the Court’s instructions, the following
3 is a table of the key financial terms of the Settlement and the proposed deductions:

4 **\$1,500,000** (Gross Settlement Amount)

- 5 - \$10,000 (Plaintiff’s proposed service award - not to exceed \$10,000)
- 6 - \$20,000 (Class Counsel Litigation Expenses Payment - not to exceed \$20,000)
- 7 - \$500,000 (Class Counsel Fees Payment)
- 8 - \$25,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- 9 - \$15,000 (Settlement Administration Expenses - not to exceed \$15,000)

10 **\$930,000** (Net Settlement Amount)

11 There are 559 Participating Class Members who worked a total of 32,327 workweeks in the Class
12 Period, and as such, the Net Settlement Amount provides an average recovery of \$1,663 per Class
13 Member and a recovery of \$28.76 per work week, with some Class Members receiving as much as
14 \$7,600 each. As consideration for this Settlement, the Gross Settlement Amount to be paid by
15 Defendant is One Million Five Hundred Thousand Dollars (\$1,500,000). (Agreement at ¶ I(S).) Under
16 the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
17 Settlement Shares to the Class; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses
18 Payment; (3) Settlement Administration Expenses; (4) the Class Representative Service Payment to
19 Plaintiff; and (5) the PAGA Payment. (Agreement at ¶ III (B)-(C).)

20 (b) The Gross Settlement Amount does not include Defendant’s share of payroll taxes.
21 (Agreement at ¶ III(A).) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
22 (Agreement at ¶ III(A).)

23 (c) Following final approval, Defendant shall fund the Gross Settlement Amount within fifteen
24 (15) days of the Effective Date. (Agreement at ¶ III(E)(9).) The Settlement Shares to Participating
25 Class Members will be mailed by the Settlement Administrator within 15 calendar days after the
26 funding of of the Gross Settlement Amount. (Agreement at ¶ III(E)(9).)

27 (d) The Net Settlement Amount shall equal the net amount available for payment to the Class
28 after deducting the Court-approved amounts for the (1) Class Counsel Fees Payment; (2) Class Counsel
Litigation Expenses Payment; (3) Class Representative Service Payment; (4) the Settlement
Administration Expenses, and (5) the PAGA Payment, from the Gross Settlement Amount. (Agreement
at ¶ I(U).) The Net Settlement Amount will be distributed as the Settlement Shares to the Class

1 Members who do not timely request exclusion ("Participating Class Members"). (Agreement at ¶¶ I(X)
2 and III(E)(1).) The Settlement Share will be calculated by: (a) dividing the Net Settlement Amount by
3 the total number of Workweeks included in the Class Data to determine a dollar amount per week
4 ("Weekly Rate"); and (iii) the Settlement Administrator shall then take the number of Workweeks
5 worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their
6 Settlement Share. (Agreement at ¶ III(C)(2).) Workweeks are based on Defendant's records, however
7 Class Members will have the right to challenge the number of workweeks.

8 (e) Class Members were sent the Court approved Class Notice using the procedure approved
9 by the Court by mailing the notice packets after updating class members' addresses using the National
10 Change of Address database and, for any notice packets returned as undeliverable, re-mailing such
11 notices to any forwarding address provided or updated address located. Class Members were provided
12 with the opportunity to exclude themselves or "opt out" if they did not want to participate in the
13 settlement. (Agreement at ¶ III(E)(3).) Class Members who did not "opt out" are deemed Participating
14 Class Members who are bound by the Settlement and will be mailed a settlement payment. (Agreement
15 at ¶ III(E)(3)(c).) The Class Notice also advised Class Members of their right to object to the
16 Settlement, either by filing written objections or by appearing at the final approval hearing to make an
17 oral objection.

18 (f) A Participating Class Member must cash his or her Settlement Share check within 180 days
19 after it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within 180 days will
20 be voided and any funds from such uncashed checks will be paid to the California State Controller's
21 Unclaimed Property Fund in the name of the Participating Class Member. (Agreement at ¶ III(E)(10).)

22 (g) ILYM Group was appointed by the Court as the Settlement Administrator for the Settlement.
23 (Agreement at ¶ III(D); Preliminary Approval Order at ¶ 10.) From the Gross Settlement Amount, the
24 Settlement Administrator shall be paid for the expenses of effectuating and administering the
25 Settlement. (Agreement at ¶ III(B)(4).) The Settlement Administrator shall receive payment for
26 services in an amount not to exceed \$15,000. (Agreement at ¶ IV(D)(4).) The actual Settlement
27 Administration Expenses will be documented in the Declaration of Madely Nava (Settlement
28 Administrator) to be filed after the April 4, 2022 response deadline and in advance of the hearing.

1 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
2 not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment.
3 (Agreement at ¶ III(B)(2).) Class Counsel will also be allowed to apply separately for an award of
4 Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶
5 III(B)(2).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,000
6 to the Plaintiff as his Class Representative Service Payment. (Agreement at ¶ III(B)(1).) In support of
7 this separate motion for attorneys' fees, expenses and service awards, Class Counsel is providing
8 evidentiary support, for these requests, including lodestar.

9 (i) Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the
10 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal.
11 Labor Code Section 2698, et seq. ("PAGA"). Pursuant to the express requirements of Labor Code §
12 2699(i), the PAGA Payment shall be allocated as follows: \$18,750 to the LWDA (the "LWDA
13 Payment") as the LWDA's 75% share of the settlement of civil penalties pursuant to the PAGA, and
14 \$6,250 for for distribution to the Aggrieved Employees to be allocated based upon their respective pay
15 periods during the PAGA Period. (Agreement at ¶ III(D)(3).) As set forth in the accompany proof of
16 service, the LWDA has been served with this motion and the Agreement.

17 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved
18 for the same reasons the Court granted preliminary approval to the settlement, agreeing that "the
19 Settlement is fair, adequate and reasonable when balanced against the probable outcome of further
20 litigation and the significant risks relating to certification, liability and damages issues." (Preliminary
21 Approval Order at ¶ 4.) In sum, this settlement valued at \$1,500,000 is an excellent result for the Class.
22 This result is particularly favorable in light of the fact that liability and class certification in this case
23 were far from certain in light of the defenses asserted by Defendant. There have been no objections
24 to the Settlement. Given the complexities of this case, the defenses asserted, the uncertainty of class
25 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
26 reasonable and adequate, and should be finally approved.

1 4. Procedural status of the settlement - On February 18, 2022, the Settlement
2 Administrator mailed the Court-approved Class Notice to the Class Members, which provided each
3 class member with the terms of the Settlement, including notice of the claims at issue and the financial
4 terms of the settlement, including the attorneys' fees, costs, and service award that were being sought,
5 how individual settlement awards would be calculated, and the specific, estimated payment amount to
6 that individual, of their right to request exclusion from the Settlement, object to the Settlement, do
7 nothing, and the implications of each such action. In disseminating the notice, the Settlement
8 Administrator followed the notice procedures authorized by the Court in its Preliminary Approval
9 Order. Currently, there have been no objections and no opt outs. As such, the entire Class is currently
10 participating in the Settlement and will be sent a settlement check. The final details of the notice
11 process will be documented in the Declaration of Madely Nava (Settlement Administrator) to be filed
12 after the April 4, 2022 response deadline and in advance of the hearing.

13
14 5. Description of Plaintiffs' claims - The Action generally alleges that Plaintiff and other
15 Class Members were not properly paid minimum wages or overtime wages due to work performed
16 off-the-clock, were not timely provided with meal and rest periods, were not provided accurate itemized
17 wage statements, were not reimbursed for required business expenses and were not paid wages when
18 due. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable
19 or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the
20 foregoing claims.

21
22 6. Procedural History of the Litigation

23 (a) On June 2, 2020, Plaintiff filed a Class Action Complaint against Defendant in the
24 Superior Court of the State of California, County of San Bernardino. Plaintiff asserted class claims for:
25 (1) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay
26 minimum wages in violation of Cal. Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime
27 wages in violation of Cal. Labor Code § 510; (4) failure to provide required meal periods in violation
28 of Cal. Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal.

1 Labor Code §§ 226.7 and 512; (6) failure to provide expense reimbursement in violation of Labor Code
2 § 2802; (7) failure to provide accurate wage statements in violation of Cal. Labor Code §226; and, (8)
3 failure to provide wages at termination in violation of Cal. Lab. Code § 201, 202. On August 14, 2020,
4 Defendant filed an Answer to Plaintiff's Class Action Complaint asserting thirty-six (36) affirmative
5 defenses.

6 (b) On September 8, 2020, Plaintiff filed a Representative Action Complaint against
7 Defendant in the Superior Court of the State of California, County of San Bernardino for recovery of
8 civil penalties for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq.
9 ("PAGA"). The purported Labor Code violations alleged therein include: (1) Failure to pay minimum
10 wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (2) Failure to pay overtime
11 wages in violation of California Labor Code § 510, et seq.; (3) Failure to provide required meal periods
12 in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (4) Failure
13 to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the
14 applicable IWC Wage Order; (5) Failure to reimburse employees for required expenses in violation of
15 California Labor Code § 2802; (6) Failure to provide accurate itemized wage statements in violation
16 of California Labor Code § 226; and (7) Failure to provide wages when due in violation of California
17 Labor Code §§ 201, 202 and 203.

18 (c) On August 3, 2021, pursuant to the stipulation of the Parties, the Class Action and the
19 Representative were consolidated by the Order of the Court.

20 (d) Over the course of litigation, the Parties engaged in the investigation of the claims,
21 including production of documents, class data, and other information, allowing for the full and
22 complete analysis of liabilities and defenses to the claims in this Action. The information obtained by
23 Plaintiff included: (1) data showing employees and their weeks of employment; (2) work time data
24 concerning hours worked and time punch data; (3) Defendant's employee wage and hour policies; (4)
25 the employment files for the Plaintiff; and, (6) samples of wage statements provided by Defendant.
26 Plaintiff and Defendant agreed to discuss resolution of the Action through a mediation.

27 (e) Prior to mediation, the Parties engaged in the above investigation and the exchange
28 of documents and information in connection with the Actions. On March 17, 2021, the Parties

1 participated in an all-day mediation presided over by Louis Marlin, Esq., a respected and experience
2 mediator of wage and hour class actions. Following the mediation, each side, represented by its
3 respective counsel, were able to agree to settle the Action based on a mediator's proposal which was
4 memorialized in the form of a Memorandum of Understanding. At all times, the negotiations were
5 arm's length and contentious.

6 (f) The Parties continued to negotiate the terms of the settlement and prepared the final
7 Agreement which was signed by the Parties and is now presented to this Court for preliminary
8 approval. Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals who
9 are or previously were employed by Defendant in California who were classified as non-exempt
10 employees at any time during the Class Period." (Agreement at ¶ I(C).) The "Class Period" is from
11 June 2, 2016 to June 15, 2021. (Agreement at ¶ I(I).) The Class consists of an estimated total of 559
12 Class Members. (Agreement at ¶ III(C)(5).)

13 (g) Class Counsel has conducted a thorough investigation into the facts of the class action. Over
14 the course of two years, Class Counsel has diligently evaluated the Class Members' claims against
15 Defendants. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
16 access to necessary information for the Class. In addition, Class Counsel previously negotiated
17 settlements with other employers in actions involving nearly identical issues and analogous defenses.
18 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
19 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
20 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
21 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
22 appellate issues.

23 24 7. History of Settlement Discussions

25 (a) This settlement is the result of extensive and hard fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
27 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
28 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the claims of

1 the Class in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate
2 the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement,
3 and Class Counsel are experienced in wage and hour employment law class actions, as Class Counsel
4 has previously litigated and certified similar claims against other employers.

5 (b) The Parties attended an arms-length mediation sessions with Louis Marlin, Esq., a respected
6 and experienced mediator of wage and hour class actions, in order to reach this settlement. In
7 preparation for the mediation, Defendant provided Class Counsel with necessary information for the
8 members of the Class, including time data, payroll data and data concerning the composition of the
9 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting Group, and
10 prepared and submitted a mediation brief to the Mediator. At the conclusion of the all-day mediation,
11 the Parties agreed to this Settlement, which was accepted in light of the uncertainties of protracted
12 litigation.

13 (c) From April 2021 through September 2021, the settlement agreement and exhibits thereto
14 were finalized and executed. On November 2, 2021, Plaintiff filed the motion for preliminary approval
15 of the class settlement. At the hearing on December 1, 2021, the Court issued the Preliminary Approval
16 Order granting preliminary approval of the settlement as fair and reasonable to the Class.

17 (d) Plaintiff and Class Counsel believe that this settlement is fair, reasonable and adequate. In
18 my judgment as experienced Class Counsel, this Settlement should be finally approved.

19
20 8. The outcome of this case would have been uncertain and fraught with risks.

21 (a) Here, a number of defenses asserted by Defendant present serious threats to the claims of
22 the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices complied with
23 all applicable Labor laws. Defendant argued that the off-the-clock work did not occur as it was against
24 company policy and that the rounding was neutral on its face and therefore lawful under case law. *See*
25 *e.g. AHMC Healthcare, Inc. v. Superior Court*, 24 Cal. App. 5th 1014 (2018); *Silva v. See's Candy*
26 *Shops, Inc.*, 7 Cal. App. 5th 235 (2016). Defendant also contend that their meal and rest period policies
27 fully complied with California law and that Defendant's timekeeping system recorded meal periods, and
28 was not required to record rest periods. Finally, Defendant could also argue that the recent Supreme

1 Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on
2 liability, value, and class certifiability as to the meal and rest period claims. Defendant also argued that
3 it acted in good faith and without willfulness, which if accepted would negate the claims for waiting
4 time penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is
5 questionable whether these penalties could be awarded at all based upon the alleged meal and rest
6 period violations. If successful, Defendant's defenses could eliminate or substantially reduce any
7 recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
8 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

9 (b) There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
10 to obtain class certification and thereby not recover on behalf of any employees other than themselves.
11 Defendant argued that the individual experience of each putative class member varied with respect to
12 the claims. Defendant could also contest class certification by arguing injury and good faith were case
13 by case determinations that precluded class certification. Plaintiff is aware of cases where class
14 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
15 (2019) (denying certification of meal and rest break claims). Defendant also contended that individual
16 differences in work experiences not only impacted damages but would also impact certification.
17 Finally, even if class certification was successful, as demonstrated by the California Supreme Court
18 decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to
19 overcome for a class wide recovery even where the class has been certified. While other cases have
20 approved class certification in wage and hour claims, class certification in this action would have been
21 hotly disputed and was by no means a foregone conclusion.

22 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further
23 litigation cannot be overstated. There is little doubt that Defendants would post a bond and appeal in
24 the event of an adverse judgment. A post-judgment appeal by Defendants would have required many
25 more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total,
26 then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery
27 today outweigh an uncertain result three or more years in the future. Plaintiff and Class Counsel
28 recognize the expense and length of continuing to litigate and trying this Action against Defendants

1 through possible appeals which could take several years. Class Counsel has also taken into account the
2 uncertain outcome and risk of litigation, especially in complex class actions such as this Actions. Class
3 Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses
4 to, the claims asserted in the Actions. Based upon their evaluation, Plaintiff and Class Counsel have
5 determined that the Settlement set forth in the Agreement is in the best interest of the Class Members.

6 (d) The calculations to compensate for the amount due to the Class Members at the time this
7 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
8 mediation. For the individuals whose claims are at issue in this Actions, Plaintiff analyzed the data for
9 putative class members and determined the potential maximum damages for the class claims. For the
10 Class, Plaintiff determined that the unpaid wages due to rounding were \$113,148, the maximum
11 potential meal period damages were estimated to be \$1,146,062 based on a maximum potential 47%
12 violation rate in the time records, the maximum rest period damages were estimated to be \$2,339,846
13 using a 100% violation rate because of an alleged facially illegal policy, and the off-the-clock damages
14 for donning and doffing were estimated to be \$605,520, and the alleged unpaid business expenses for
15 cell phone usage were estimate to be \$203,166. In total, the damages for the Class were calculated to
16 have a maximum total value of \$4,407,742. In addition, Plaintiff calculated that the maximum value
17 of the waiting time penalties were \$1,745,556 and the maximum value of the wage statement penalties
18 were \$1,239,900, however, these wage statement and waiting time penalties claims potentially have
19 a much smaller value, even if damages were awarded, to the extent that they are derivative of the meal
20 and rest break claims.² Consequently, the Gross Settlement Amount of \$1,500,000 represents more
21

22 ² Importantly, while Plaintiff alleged claims for statutory penalties pursuant to Labor Code
23 Sections 203 and 226, Plaintiff recognized that these claims were subject to various defenses asserted
24 by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium
25 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff was
26 properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There
27 is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
28 and when the wages were due."). Additionally, Courts have held that violations of the meal and rest
period regulations, which require payment of a "premium wage" for each improper meal period, do **not**
give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China Bisto, Inc.*, 245 Cal.
App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336
(2018). As a result, the viability of Plaintiff's claims on these theories is uncertain.

1 than 34% of the value of the potential maximum damages at issue for the Class in this case, assuming
2 these amounts could all be proven in full at trial.³ The above maximum calculations should then be
3 adjusted in consideration for both the risk of certification and the risk of establishing class-wide liability
4 on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the
5 Settlement is most certainly fair and reasonable. Clearly the goal of this litigation to obtain redress for
6 the class has been met by this settlement.

7 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a
8 significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious
9 and substantial defenses both to liability and to class certification. Currently, the maximum and
10 average class member allocation are \$7,603 and \$1,663, respectively. Given the complexities of this
11 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
12 reasonable and adequate, and should be finally approved.

13 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiff
14 would prevail against the Defendant's factual and legal defenses. While Plaintiff and Class Counsel
15 believe in the merits of the claims, Defendants has asserted real and substantial defenses to these claims
16 and to class certification. Settlement in this case clearly benefits the Class when measuring the
17 strengths of Plaintiff's case and the risk of establishing class wide liability and damages.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed this 30th day of March 29, 2022, at San Diego, California.

20
21 
22 NORMAN B. BLUMENTHAL
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24
25
26

27 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiff has not included the
28 PAGA claim in this discussion. The PAGA claim was previously addressed in the motion for
preliminary approval in paragraph 33 of the Declaration of Nordrehaug in support of that motion.

Blumenthal Nordrehaug Bhowmik De Blouw LLP

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FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

Ricardo Ehmann

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

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Charlotte James

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REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo. Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

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4G Wireless Wage Cases, Orange County Superior Court, JCCP No. 4736; Classic Party Rentals Wage & Hour Cases, Los Angeles Superior Court, Case No. JCCP No. 4672; Abu-Arafeh v. Norco Delivery Service, Inc., San Francisco County Superior Court, Case No. CGC-14-540601; Aburto v. Verizon, U.S. District Court, Southern District California, Case No. 11-cv-0088; Adkins v. Washington Mutual Bank, Class Certification Granted, San Diego County Superior Court, Case No. GIC819546; Agah v. CompUSA, U.S. District Court, Central District of California, Case No. SA CV05-1087 DOC (Anx); Akers v. The San Diego Union Tribune, San Diego County Superior Court, Case No 37-2010-00088571; Altman v. SolarCity Corporation, San Diego County Superior Court, Case No. 37-2014-00023450-CU-OE-CTL; Aquino v. Macy's West Stores, Orange County Superior Court, Case No. 30-2010-00395420; Baker v. Advanced Disability Management, Inc., Sacramento County Superior Court, Case No. 34-2014-00160711; Barcia v. Contain-A-Way, U.S. District Court, Southern District California, Case No. 07 cv 0938; Bates v. Verengo, Inc., Orange County Superior Court, Case No. 30-2012-00619985-CU-OE-CXC; Battle v. Charming Charlie Inc., San Diego

County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training, Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior Court, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Fernando Alcocer, Jr. (“Plaintiff”) and defendant DSV Solutions, LLC (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means (i) the Class Action Complaint that was filed in California state court and any amendments thereto, which is captioned *Fernando Alcocer, Jr. vs. DSV Solutions, LLC*, Case No. CIVDS2010345, pending in Superior Court of the State of California, County of San Bernardino, and (ii) the Representative Action Complaint that was filed in California state court and any amendments thereto, which is captioned *Fernando Alcocer, Jr. vs. DSV Solutions, LLC*, Case No. CIVDS2018614, pending in Superior Court of the State of California, County of San Bernardino, and (iii) the PAGA letter sent on February 17, 2020.
- B. “Aggrieved Employees” all individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees at any time during the PAGA Period.
- C. “Class” means all individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees at any time during the Class Period.
- D. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her email address (if known); and his or her dates of employment and/or weeks worked during the Class Period as a Class Member and pay periods worked during the PAGA Period.
- G. “Class Member” is a member of the Class.

- H. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval substantively in the form attached hereto as Exhibit A to this Agreement and incorporated by reference into this Agreement.
- I. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).
- J. “Class Period” means the period of time from June 2, 2016 to the earlier of preliminary approval or June 15, 2021.
- K. “Class Representative Service Payment” means the service payment made to the Plaintiff in his capacity as Class Representative in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by Plaintiff.
- L. “Court” means the Superior Court of California, County of San Bernardino.
- M. “Defendant” means DSV Solutions, LLC.
- N. “Defendant’s Counsel” means Michael Nader of Ogletree Deakins Nash Smoak & Stewart P.C.
- O. “Effective Date” means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(Q) of this Agreement.
- P. “Election Not to Participate in Settlement” means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- Q. “Final” means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, the date the Judgment is entered.
 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.

- R. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- S. “Gross Settlement Amount” means One Million Five Hundred Thousand Dollars (\$1,500,000) to be paid by Defendant as provided by this Agreement. This Gross Settlement Amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments of Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall remain the sole responsibility and separate additional obligation of Defendant. The Gross Settlement Amount is all in with no reversion to Defendant and shall be paid without the need to submit a claim form.
- T. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- U. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the PAGA Payment, and the Settlement Administration Expenses.
- V. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- W. “PAGA Period” means the period of time from June 2, 2019 to the earlier of preliminary approval or June 15, 2021.
- X. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- Y. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- Z. “Released Parties” collectively mean: Defendant, Defendant’s respective past, present and future parents, subsidiaries, corporations, divisions, and successors and assigns, and the past, present and future shareholders, managers, officers, partners, members, directors, agents, employees, attorneys, insurers, predecessors, successors, assigns, agents, representatives, investors, shareholders, administrators, affiliates, and divisions of Defendant.
- AA. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.

- BB. “Settlement Administrator” means the third party settlement administrator proposed by the Parties, as approved by the Court.
- CC. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.
- DD. “Workweek” means the seven consecutive days starting on and including Monday through and including Sunday (a “week”) during which time the Class Data reflects that a given Class Member worked any amount of time, and does not include weeks when a Class Member was on PTO, a leave of absence, jury duty, or the like for the entire week.

II. RECITALS

- A. On June 2, 2020, Plaintiff filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Bernardino. Plaintiff asserted claims that Defendant:
1. Violated California Business and Professions Code § 17200 *et seq.*;
 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1;
 3. Failed to pay overtime wages in violation of California Labor Code § 510, *et seq.*;
 4. Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 5. Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 6. Failed to reimburse employees for required expenses in violation of California Labor Code § 2802.
 7. Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and,
 8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and,
- B. On August 14, 2020, Defendant filed an Answer to Plaintiff’s Class Action Complaint asserting thirty-six (36) affirmative defenses.
- C. On September 8, 2020, Plaintiff filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Bernardino for recovery of civil penalties for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, *et seq.* (“PAGA”). The purported Labor Code violations alleged therein include: (1) Failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (2) Failure to pay

overtime wages in violation of California Labor Code § 510, et seq.; (3) Failure to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (4) Failure to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure to reimburse employees for required expenses in violation of California Labor Code § 2802; (6) Failure to provide accurate itemized wage statements in violation of California Labor Code § 226; and (7) Failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.

- D. On March 17, 2021, the Parties participated in an all-day mediation presided over by Louis Marlin, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties
- E. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Million Five Hundred Thousand Dollars (\$1,500,000). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:
 - 1. **To Plaintiffs:** In addition to the Settlement Shares to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000 as a Class Representative Service Payment. Defendant will not oppose the

Class Representative Service Payment of \$10,000 for Plaintiff. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$10,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to the Plaintiff with respect to the payment who will assume full responsibility and liability for the taxes due on the Class Representative Service Payment. To receive the payment, Plaintiff agrees to a 1542 waiver and a general release of all claims as set forth below.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$500,000, as their Class Counsel Fees Payment and an amount not more than \$20,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. Defendant will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$500,000, and \$20,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment shall be made to Class Counsel.
3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$6,250) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period. If the Court approves a PAGA Payment of less than \$25,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt out of the Settlement. One hundred percent (100%) of the PAGA Payment is in settlement of claims for penalties and not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$15,000 (“Settlement Administration Expenses”). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$15,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Settlement Share for each Participating Class Member will be calculated as follows: (i) Defendant shall provide the Class Data to the Settlement Administrator; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of Workweeks included in the Class Data to determine a dollar amount per week (“Weekly Rate”); and (iii) the Settlement Administrator shall then take the number of Workweeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement Share.
3. **Withholding.**
 - a. Subject to approval by the Court, One-Third of each Participating Class Member’s Settlement Share is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. The Settlement Administrator shall be responsible for remitting to the tax authorities employees’ and employer’s share of all payroll taxes on the Wage Portion.
 - b. Subject to approval by the Court, One-Third of each Participating Class Member’s Settlement Share is in settlement of claims for interest and One-Third of each Participating Class Member’s Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

- c. The Participating Class Members agree to hold harmless Defendant, Class Counsel, and Defendant's Counsel for any tax liability, including penalties and interest, arising out of or relating to the Participating Class Members' failure to pay taxes on any amounts paid pursuant to this Settlement.
 - 4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.
 - 5. **Class Size Modification.** Defendant has represented that the (1) Class consists of an estimated total of 590 Class Members who worked a total of 30,000 weeks at any time during the Class Period. In regard hereto, Defendant will provide a declaration under oath prior to the earlier of the filing of the motion for preliminary approval as to the number of Class Members and workweeks during the Class Period. If there is an increase by 10% or more in the number of estimated weeks worked, Defendant shall have the option to either (1) increase the Gross Settlement Amount proportionally with the added work weeks, or (2) to limit the Class Period such that it covers up to 10% more than the estimated weeks worked estimated herein.
- D. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint ILYM Group as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendants and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Settlement Shares or any other distribution of monies contemplated by this Settlement Agreement.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. Notice to Class Members. After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:

- a. No later than 20 days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to

the Settlement Administrator with the Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, including Class Counsel, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration only, and shall not be disclosed to Class Counsel.

- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the response date for written objections, disputes and opt-outs will be extended an additional 15 days, and the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Dates of Employment allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. If a Class Notice Packet is re-mailed, the response date for written objections will be extended an additional 15 days. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.
- b. **Disputes as to Dates of Employment.** Each Class Member shall also have forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute

the dates of employment the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable. If a Class Notice Packet is re-mailed, the response date for disputes will be extended an additional 15 days.

- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets, a timely written request to not participate in the Settlement, that includes: (1) the case name and number of the Action; (2) a statement that the Class Member requests to be excluded from the Settlement; (3) the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; and (4) the Class Member's signature. If a Class Notice Packet is re-mailed, the response date for opt-outs will be extended an additional 15 days. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment, except that an Aggrieved Employee will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless of their request for exclusion. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

- d. All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.
 - e. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of the names of all Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If the number of Class Members who timely submit valid Elections Not to Participate in Settlement exceeds ten percent (10%) of the Class, Defendant, at its sole discretion, shall have the right but not the obligation to revoke the Settlement. Defendant shall exercise its revocation rights, if at all, within fourteen (14) days after receiving a declaration from the Settlement Administrator of the total number of Elections Not to Participate in Settlement at the conclusion of that period. Defendant shall exercise its right by providing written notice to Class Counsel. If Defendant exercises its revocation rights, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement. The Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties. This Agreement and its terms, and the communications, negotiations, and settlement discussions related to the Action, shall be inadmissible and treated as confidential to the fullest extent allowed by law.
5. **No Solicitation.** The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
- a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiff files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.

- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
 - c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payments, and the Class Counsel Litigation Expenses Payment.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings.

If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within fifteen (15) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments and the PAGA Payment in accordance with this Agreement.
10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will also send the affected Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the

name of the Participating Class Member, and the Participating Class Member shall remain bound by the Settlement. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their Settlement Share checks.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. **Release of Claims.**

1. **Participating Class Members.** As of the Effective Date, Defendant shall receive a release from each and every Participating Class Member of all claims pled in the Action, as well as all predicate claims that could have been pled based on the factual allegations and legal theories contained in the Action, during the Class Period. The release expressly excludes all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period and PAGA claims outside of the PAGA Period ("Released Class Claims").
2. **Aggrieved Employees.** As of the Effective Date, Defendant shall receive a release from the State of California of all PAGA claims pled in the Action, as well as all predicate PAGA claims which could have been pled based on the factual allegations and legal theories contained in the Action, including the PAGA letter sent by the Plaintiff, that occurred during the PAGA Period as to the Aggrieved Employees ("Released PAGA Claims"). The release of the Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an exclusion from the Class.
3. **Plaintiff.** As of the Effective Date, Plaintiff generally, releases and discharges the Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period ("Plaintiff's Released Claims"). This release of Plaintiff's Released Claims releases the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party that occurred during the Class Period. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits and claims outside the Class Period.

Plaintiff acknowledges that he may discover facts or law different from, or in addition to the facts or law that he knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete.

4. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts and/or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

5. **Class Counsel.** As of the date the Defendant fully funds the Gross Settlement Amount, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Limitation on Public Statements About Settlement.** 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 as may be strictly required to effectuate the terms of the Settlement. Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, or publish information in any manner or form on any medium, whether printed or electronic, 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, Class Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions or for seeking approval of an unrelated settlement. This provision also does not limit Class Counsel from complying with ethical obligations to the Class.

I. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be constructed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate. The Parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the

Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may only be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in section III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended,

modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.

7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232

E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

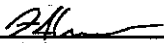
Michael Nader
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
500 Capitol Mall, Suite 2500
Sacramento, CA 95814
Tel: 916-840-3151
Fax: 916-840-3159
Email: michael.ader@ogletree.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the date of the mediation with the Louis Marlin on March 17, 2021 until the earlier of the Effective Date or the date this Agreement shall not longer be of any force or effect.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Jun 10, 2021



Fernando Alocer (Jun 10, 2021 03:49 PDT)
Plaintiff Fernando Alocer, Jr.

Dated: _____

Michael Marlow, President
For Defendant DSV Solutions, LLC

E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

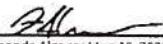
Michael Nader
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
500 Capitol Mall, Suite 2500
Sacramento, CA 95814
Tel: 916-840-3151
Fax: 916-840-3159
Email: michael.ader@ogletree.com

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IV. EXECUTION BY PARTIES AND COUNSEL

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Dated: Jun 10, 2021



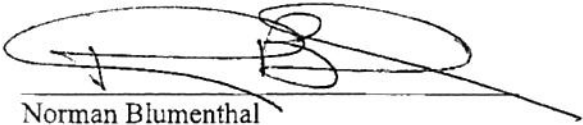
Fernando Alocer (Jun 10, 2021 03:49 PDT)
Plaintiff Fernando Alocer, Jr.

Dated: JUNE 24, 2021



Michael Marlow, President
For Defendant DSV Solutions, LLC

Dated: 6/10/21



Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: 6/28/2021

DocuSigned by:

B76506CB153447D...
Michael Nader
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Attorney for Defendant DSV Solutions, LLC

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

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

**(Fernando Alcocer, Jr. vs. DSV Solutions, LLC, Superior Court of the State of California,
County of San Bernardino, Case No. CIVDS2010345)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<__>>. See the explanation in Section 5 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed in Section 4 below. If your address has changed, you must notify the Settlement Administrator as explained in Section 6 below.
Exclude Yourself	To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement. Instructions are set forth in Section 7 below.
Object	Write to the Court about why you do not agree with the settlement or appear at the Final Approval Hearing to make an oral objection. Directions are provided in Section 8 below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of San Bernardino (the “Court”) has been reached between Plaintiff Fernando Alcocer, Jr. (“Plaintiff”) and Defendant DSV Solutions, LLC (“Defendant”) and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees at any time during the Class Period.

The Class Period is June 2, 2016 to June 15, 2021 [the earlier of preliminary approval or June 15, 2021].

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Class Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 2, 2020, Plaintiff filed a proposed class action Complaint in the Superior Court of the State of California, County of San Bernardino (the “Complaint”), alleging the following claims against Defendant: unfair competition, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to provide expense reimbursement, failure to provide accurate itemized wage statements, and failure to pay wages at termination.

On September 8, 2020, Plaintiff filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of San Bernardino for recovery of civil penalties for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”) based upon the above alleged violations. For purposes of this Settlement, the Parties stipulated to consolidating the two lawsuits, and together the lawsuits are referred to as the “Action”.

Defendant denies that it has failed to comply with the law in any respect. Defendant also contends that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action; and that this Action cannot be maintained as a class action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the “Gross Settlement Amount”) to fund the settlement of this Action. The Gross Settlement Amount includes all payments of Settlement Shares to Class Members contemplated by the Settlement, the Settlement Administration Expenses, the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the PAGA Payment for civil penalties. Any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages shall be separately paid by Defendant.

Within fifteen (15) days of the Judgment becoming Final, Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is no longer subject to appeal. Fifteen (15) days after the settlement is funded, the Settlement Administrator will mail checks for the Settlement Shares to Participating Class Members.

Amounts to be Paid From the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount as follows, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before Settlement Shares are made to Class Members who do not request exclusion (“Participating Class Members”):

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$_____, for expenses, including without limitation expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing Settlement Shares and tax forms, and handling inquiries and uncashed checks.
- Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which is presently \$500,000 and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$20,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money) and has been paying all litigation costs and expenses.
- Class Representative Service Payment. Class Representative Service Payment in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to the Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$25,000 relating to the claim for penalties under the Private Attorney Generals Act ("PAGA"), \$18,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment"). The remaining \$6,250 will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period (June 2, 2019 to June 15, 2021). The PAGA Payment shall be allocated to all Aggrieved Employees regardless of whether they request exclusion.

Calculation of Payments to Class Members. After all of the payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount", shall be distributed to Class Members as Settlement Shares to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$_____, based upon the above proposed deductions. Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The Settlement Share for each Participating Class Member will be calculated as follows: (a) the Settlement Administrator shall divide the Net Settlement Amount by the total number of Workweeks included in the Class Data to determine a dollar amount per week ("Weekly Rate"); and (b) the Settlement Administrator shall then take the number of Workweeks worked by each Participating Class Member and multiply it by the Weekly Rate to calculate their Settlement Share.

"Workweek" means the seven consecutive days starting on and including Monday through and including Sunday (a "week") during which time the Class Data reflects that a given Class Member worked any amount of time, and does not include weeks when a Class Member was on PTO, a leave of absence, jury duty, or the like for the entire week.

If the Settlement is approved by the Court and you do not exclude yourself, you will be mailed a check for your Settlement Share to the same address as this Class Notice. You do

not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. One-Third (1/3) of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. One-Third (1/3) of each Participating Class Member's Settlement Share is in settlement of claims for interest and One-Third (1/3) of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering the Judgment.

4. What Do I Release Under the Settlement?

If you do not timely exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and any other Released Party about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you to release Defendant of all claims described below:

all claims and causes of action alleged in the Action and the PAGA Letter, as well as all predicate claims based on the factual or legal theories alleged in the Action and the PAGA Letter, or reasonably could have been alleged based on the facts and legal theories alleged in the Action and the PAGA Letter, during the Class Period. This includes all of the following legal claims: claims for unpaid wages, including minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates; claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premiums, and the alleged failure to properly record meal periods; claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and/or the failure to pay premiums; claims for unreimbursed expenses, including expenses incurred for personal cell phone usage; any and all claims for improper or inaccurate itemized wage statements; claims for the untimely payment of final wages and associated waiting time penalties under Labor Code Section 203; claims regarding the alleged failure to maintain required records of time worked; claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699 *et seq.* ("PAGA") premised on the facts, claims, causes of action, or legal theories alleged in the Action; and claims under the Business & Professions Code (including Section 17200 *et seq.*) premised on the facts, claims, or legal theories described in the Action; (collectively, the "Released Claims.") The period of these Released Claims shall extend to the limits of the Class Period. These Released Claims expressly exclude claims for vested

benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation, and claims outside of the Class Period and PAGA claims outside of the PAGA Period.

5. How much will my payment be?

Defendant's records reflect that you have <<_____>> weeks worked for Defendant during the Class Period. The Class Period is June 2, 2016 to **June 15, 2021**.

Based on this information, your estimated Settlement Share is <<_____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Class Notice no later than _____ [forty-five (45) days after the mailing of the Class Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your Settlement Share will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____ (800) _____.

The Court will hold a Final Approval Hearing on _____, at _____ to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, usually more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will not receive a Settlement Share from the Settlement, and you will not be bound by the Settlement which means you will retain the right to sue Defendant for Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released PAGA Claims regardless whether they submit a request for exclusion.

To exclude yourself from the Settlement, you must submit a statement that is signed and must include (1) your name, (2) address, (3) the last four digits of your social security number or employee ID number, (4) a statement that you wish to be excluded from the settlement of this Lawsuit, and (5) that you understand that by requesting to be excluded from the Settlement Agreement, you will not receive any money from the Settlement Agreement described in this Notice.

To opt out, you must mail to the Settlement Administrator, by First Class Mail, a written, signed and dated request to opt-out postmarked no later than _____ [forty-five (45) days after the date of the Notice or 60 days after the Notice in the case of re-mailing]. The request to opt-out must be received by the Settlement Administrator and must state in substance: "I wish to be

excluded from the Class in the *Alcocer v. DSV Solutions, LLC* lawsuit. I understand that if I ask to be excluded from the Class, I will not receive a settlement share from the settlement of this Action.” The request to opt-out should state the Class Member’s full name, address, telephone number, social security number for verification purposes, the approximate dates of employment in California by Defendant. Please include the name and number of the case, which is *Alcocer v. DSV Solutions, LLC*, Case No. CIVDS2010345. The request to opt-out must be signed by you. No other person may opt-out for a living member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I don’t agree with the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement, the attorneys’ fees, the costs and/or the service award, either in writing or in person. Objections that are in writing should state the Class Member’s name, current address, telephone number, and the dates of employment in California by Defendant, and describe why you believe the Settlement is unfair. All written objections or other correspondence should also state the name and number of the case, which is *Alcocer v. DSV Solutions, LLC*, in the Superior Court of the State of California, County of San Bernardino, Case No. CIVDS2010345.

All written objections must be mailed to the Settlement Administrator at _____, no later than _____ [forty-five (45) days after the date of the Notice or 60 days after the Notice in the case of re-mailing].

Alternatively, Class Members may appear at the Final Approval Hearing on _____ at _____ to make an oral objection without submitting a written objection. Please note that due to Covid-19 precautions, this hearing may be held remotely, so if you intend to appear, please consult the Court’s website for the current instructions on how to appear.

To object to the Settlement, you must not opt out, and if the Court approves the Settlement despite your objection, you will be bound by the terms of the Settlement in the same way as Class Members who do not object and you will still be mailed a check for your Settlement Share.

The address for Class Counsel is:

Class Counsel:

Norman Blumenthal
Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223 / Fax: 858-551-1232
Email: kyle@bamlawca.com
Website: www.bamlawca.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, in Department 26 of the Superior Court of California, County of San Bernardino, 247 West Third Street, San Bernardino, CA 92415, before Judge David Cohn. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing remotely. See the instructions at <https://www.sb-court.org/general-information/remote-access>.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at _____ or write to *Alcocer v. DSV Solutions, LLC* Settlement Administrator, c/o _____; or contact Class Counsel at 1-858-551-1223.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Alcocer v. DSV Solutions, LLC*. You may also get more details by examining the Court's file via the website for the California Superior Court for the County of San Bernardino (<https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>) and entering the Case No. CIVDS2010345.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all unclaimed funds to the paid to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member where the funds can be claimed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.
- The Defendant supports the Settlement, and will not retaliate in any manner whatsoever against any Class Member, whether they choose to stay in the Class as a Settlement Class Member and receive an Individual Settlement Share, or request to be excluded from the Settlement, or object to the Settlement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

FERNANDO ALCOCER, JR., on behalf of
the State of California, as a private attorney
general,

Plaintiff,

v.

DSV SOLUTIONS, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **CIVDS2010345**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. David Cohn
Dept.: S-26

Action Filed: June 2, 2020
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

1 This matter, having come before the Honorable David Cohn of the Superior Court of the
2 State of California, in and for the County San Bernardino, on _____[DATE], for the motion
3 by Plaintiff Fernando Alcocer, Jr. ("Plaintiff") for preliminary approval of the class settlement
4 with Defendant DSV Solutions, LLC ("Defendants"). The Court, having considered the briefs,
5 argument of counsel and all matters presented to the Court and good cause appearing, hereby
6 GRANTS Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

7
8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 ("Agreement") attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court's determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. As part of the Settlement, the Parties have stipulated to consolidate this action,
18 Case No. CIVDS2010345, with the representative PAGA action, Case No. CIVDS2010345. This
19 Court approves consolidation of these two cases with Case No. CIVDS2010345 to be the lead
20 case.

21 4. The Gross Settlement Amount is One Million Five Hundred Thousand Dollars
22 (\$1,500,000). It appears to the Court on a preliminary basis that the settlement amount and terms
23 are fair, adequate and reasonable as to all potential Class Members when balanced against the
24 probable outcome of further litigation and the significant risks relating to certification, liability and
25 damages issues. It further appears that investigation and research have been conducted such that
26 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
27 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as

1 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
2 It further appears that the Settlement has been reached as the result of serious and non-collusive,
3 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
4 adequate, and reasonable when balanced against the probable outcome of further litigation and the
5 significant risks relating to certification, liability, and damages issues.

6 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
7 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000, and
8 proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
9 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
10 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
11 supporting these requests, including lodestar, prior to final approval.

12 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to
13 certification of a class for settlement purposes only. This stipulation will not be deemed
14 admissible in this or any other proceeding should this Settlement not become final. For settlement
15 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
16 previously were employed by Defendant in California who were classified as non-exempt
17 employees at any time during the Class Period." The Class Period is June 2, 2016 to [REDACTED],
18 2021.

19 7. The Court concludes that, for settlement purposes only, the Class meets the
20 requirements for certification under section 382 of the California Code of Civil Procedure in that:
21 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
22 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
23 community of interest amongst the members of the Class with respect to the subject matter of the
24 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
25 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
26 action is superior to other available methods for the efficient resolution of this controversy; and (f)

1 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
2 representative of the Class.

3 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
4 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
5 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

6 9. The Court hereby approves, as to form and content, the Notice of Proposed
7 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
8 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
9 accurately inform the Class of all material elements of the proposed Settlement, of the Class
10 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
11 member’s right and opportunity to object to the Settlement. The Court further finds that the
12 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
13 and this Order meets the requirements of due process, is the best notice practicable under the
14 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
15 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
16 the Agreement.

17 10. The Court hereby appoints _____ as Settlement Administrator. No later
18 than twenty (20) calendar days after preliminary approval of the Settlement by the Court,
19 Defendant shall provide to the Settlement Administrator an electronic spreadsheet with the Class
20 Data. The Settlement Administrator will perform address updates and verifications as necessary
21 prior to the mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no
22 event later than 14 days after receiving the Class information spreadsheet, the Settlement
23 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

24 11. The Court hereby preliminarily approves the proposed procedure for exclusion
25 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
26 from the Class as provided in the Class Notice by following the instructions for requesting
27 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
28

1 postmarked by no later than forty-five (45) calendar days after the date of the mailing of the Class
2 Notice and received by the Settlement Administrator. If the Class Notice Packet is re-mailed, the
3 response date for requests for exclusion will be extended an additional 15 days. Any such person
4 who chooses to opt out of and be excluded from the Class will not be entitled to any recovery
5 under the Settlement and will not be bound by the Settlement or have any right to object, appeal or
6 comment thereon. Class Members who have not requested exclusion shall be bound by all
7 determinations of the Court, the Agreement and the Judgment. A request for exclusion may only
8 opt out that particular individual, and any attempt to effect an opt out of a group, class, or subclass
9 of individuals is not permitted and will be deemed invalid.

10 12. Any Class Member who has not opted out may appear at the final approval hearing
11 and may object or express the Member's views regarding the Settlement, and may present
12 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
13 and determined by the Court as provided in the Notice. Class Members will have forty-five (45)
14 calendar days from the date of the mailing of the Class Notices to submit their written objections
15 to the Settlement Administrator in accordance with the instructions in the Class Notice. If the
16 Class Notice Packet is re-mailed, the response date for written objections will be extended an
17 additional 15 days. Alternatively, Class Members may appear at the Final Approval Hearing to
18 make an oral objection.

19 13. A Final Approval Hearing shall be held before this Court on _____
20 _____ at _____ in Department 26 at the San Bernardino Justice Center of the San
21 Bernardino County Superior Court to determine all necessary matters concerning the Settlement,
22 including: whether the proposed settlement of the Action on the terms and conditions provided for
23 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
24 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
25 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
26 Class Members; and to finally approve attorneys' fees and costs, the service award, and the
27 expenses of the Settlement Administrator. All papers in support of the motion for final approval
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1 and the motion for attorneys' fees, costs and service awards shall be filed with the Court and
2 served on all counsel no later than sixteen (16) court days before the hearing.

3 14. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 15. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as of before entering into the Agreement,
19 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 16. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 17. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

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HON. DAVID COHN
JUDGE, SUPERIOR COURT OF CALIFORNIA

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PRELIMINARY APPROVAL ORDER

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

11665429.2

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

FERNANDO ALCOCER, JR., on behalf of
the State of California, as a private attorney
general,

Plaintiff,

v.

DSV SOLUTIONS, LLC, a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **CIVDS2010345**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. David Cohn
Dept.: S-26

Action Filed: June 2, 2020
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiff Fernando Alcocer, Jr. ("Plaintiff") for an order finally approving
2 the Class Action Settlement Agreement ("Agreement") with Defendant DSV Solutions, LLC
3 ("Defendant"), attorneys' fees and costs, service payments, and the fees and expenses of the
4 Settlement Administrator duly came on for hearing on _____ before the Honorable
5 David Cohn.

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7 **I.**
8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of San Bernardino, and over all Parties to this
14 litigation, including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of One Million Five Hundred
17 Thousand Dollars (\$1,500,000) and the terms set forth in the Agreement are fair, reasonable, and
18 adequate.
- 19 4. The Court further finds that the Settlement was the result of arm's length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court's conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

- 26 5. On _____, the Court granted preliminary approval of the Settlement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes

1 only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
4 by first class mail to members of the Class at their last known addresses on or about
5 _____. Mailing of the Class Notice to their last known addresses was the best notice
6 practicable under the circumstances and was reasonably calculated to communicate actual notice
7 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
8 Members fully and accurately informed the Class Members of all material elements of the
9 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
10 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
11 fully with the laws of the State of California, the United States Constitution, due process and other
12 applicable law. The Class Notice fairly and adequately described the Settlement and provided
13 Class Members adequate instructions and a variety of means to obtain additional information.

14 7. The deadline for opting out of the Class or submitting written objections to the
15 Settlement was _____. There was an adequate interval between notice and the deadline
16 to permit Class Members to choose what to do and act on their decision. A full opportunity has
17 been afforded to the Class Members to participate in this hearing, and all Class Members and other
18 persons wishing to be heard have been heard. Class Members also have had a full and fair
19 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness Of Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 parties during an all-day mediation before Louis Marlin, a respected and experienced mediator of
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1 wage and hour class actions. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. ____
8 objections were received. _____ requests for exclusion were received.

9 e. The participation rate was high. _____ Class Members will be mailed a
10 settlement payment, representing ____% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$_____ for attorneys' fees, representing one-third of the
20 Gross Settlement Amount, and \$_____ for litigation costs and expenses, is reasonable,
21 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and
22 the results achieved by Class Counsel. The requested award has been supported by Class
23 Counsel's lodestar and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class
27 Representative Service Payment in the amount of \$_____ to the Plaintiff is reasonable in light
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1 of the risks and burdens undertaken by the Plaintiff in the litigation, for the time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and for the execution of a general
3 release.

4 **Settlement Administration Expenses**

5 13. The Settlement Administrator shall calculate and administer the payment to be
6 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
7 transmit the Class Representative Service Payment to the Plaintiffs, distribute the PAGA Payment,
8 issue any required tax reporting forms, calculate withholdings and perform the other remaining
9 duties set forth in the Agreement. The Settlement Administrator has documented \$ _____ in
10 fees and expenses, and this amount is reasonable in light of the work performed by the Settlement
11 Administrator.

12 **PAGA Payment**

13 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
14 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
15 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
16 Aggrieved Employees based on their respective pay periods worked during the PAGA Period
17 (June 2, 2019 to June 15, 2021). The Court finds this PAGA Payment to be reasonable. All
18 Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the
19 release of the Released PAGA Claims as set forth below, whether or not they opt out of the
20 Settlement.

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22 **II.**

23 **ORDERS**

24 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

25 1. The certification of the Class for the purposes of settlement is confirmed. The
26 Class is defined as follows:

27 All individuals who are or previously were employed by Defendant in California
28 who were classified as non-exempt employees at any time during the Class Period
(June 2, 2016 to June 15, 2021).

FINAL APPROVAL ORDER AND JUDGMENT

1 2. All persons who meet the foregoing definition are members of the Class, except for
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. [INSERT
3 REFERENCE TO IDENTIFY ANY OPT OUTS].
4

5 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
6 best interest of the Class.

7 4. Class Counsel are awarded attorneys' fees in the amount of \$_____ and
8 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
9 compensation or reimbursement from Defendants, Plaintiffs or members of the Class.

10 5. The payment of the Class Representative Service Payment in the amount of
11 \$_____ to the Plaintiff is approved.

12 6. The payment of \$_____ to the Settlement Administrator for their fees and
13 expenses is approved.

14 7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance
15 with the Agreement.

16 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
17 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
18 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
19 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
20 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
21 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
22 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
23 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
24 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
25 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
26 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
27 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
28 theory of claim or issue preclusion or similar defense as to the Released Class Claims.

1 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
2 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
3 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
4 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
5 to individual Class Members.

6 10. If the Agreement does not become final and effective in accordance with the terms
7 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
8 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
9 revert to their respective positions as of before entering into the Agreement, and expressly reserve
10 their respective rights regarding the prosecution and defense of this Action, including all available
11 defenses and affirmative defenses, and arguments that any claim in the Action could not be
12 certified as a class action and/or managed as a representative action.

13
14 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

15 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
16 Plaintiff, and all members of the Class, shall take nothing in the Action.

17 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
18 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
19 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
20 arising from or in connection with the distribution of settlement benefits.

21 3. The Parties are authorized, without further approval from the Court, to agree to and
22 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
23 attached thereto which are consistent with this Final Approval Order and Judgment and do not
24 limit the rights of the Parties or Class Members under the Agreement.

25 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
26 provided in the Agreement and in this Final Approval Order and Judgment.

1 5. As of the Effective Date, each and every Class Member who has not validly opted
2 out has released the “Released Class Claims” against the Defendants and all of the “Released
3 Parties” as set forth in the Agreement.

4 6. As used in paragraph 5 above, the quoted terms have the meanings set forth below:

5 (a) “Released Class Claims” means all claims pled in the Action, as well as all
6 predicate claims that could have been pled based on the factual allegations and legal theories
7 contained in the Action, during the Class Period. The release expressly excludes all other claims,
8 including claims for vested benefits, wrongful termination, unemployment insurance, disability,
9 social security, and workers’ compensation, and claims outside of the Class Period and PAGA
10 claims outside of the PAGA Period.

11 (b) “Released Parties” collectively mean: Defendant, Defendant’s respective
12 past, present and future parents, subsidiaries, corporations, divisions, and successors and assigns,
13 and the past, present and future shareholders, managers, officers, partners, members, directors,
14 agents, employees, attorneys, insurers, predecessors, successors, assigns, agents, representatives,
15 investors, shareholders, administrators, affiliates, and divisions of Defendant.

16 7. As of the Effective Date, Defendant shall receive a release from the State of
17 California of all PAGA claims pled based on the factual allegations contained in the operative
18 complaint or any amendments thereto and PAGA letters sent by this Plaintiff that occurred during
19 the PAGA Period as to the Aggrieved Employees (“Released PAGA Claims”). The release of the
20 Released PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an
21 Aggrieved Employee submitted a request for an exclusion from the Class.

22 8. As of the Effective Date, Plaintiff generally, releases and discharges the Released
23 Parties from any and all claims, transactions or occurrences between them that occurred during the
24 Class Period (“Plaintiff’s Released Claims”) as set forth fully in the Agreement.

25 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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HON. DAVID COHN
JUDGE, SUPERIOR COURT OF CALIFORNIA

FINAL APPROVAL ORDER AND JUDGMENT