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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 KYLE  
NORDREHAUG IN SUPPORT OF  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: December 1, 2021  
Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn  
Dept.: S26

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

1 I, Kyle Nordrehaug, declare as follows:

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

7 2. This declaration is being submitted in support of Plaintiff's unopposed motion for  
8 preliminary approval of the proposed class action settlement with DSV Solutions, LLC  
9 ("Defendant"), which motion seeks entry of an order: (1) preliminarily approving the proposed  
10 settlement of this class action with Defendants; (2) for settlement purposes only, conditionally  
11 certifying the Class, which is comprised of the California Class of all individuals who are or  
12 previously were employed by Defendant in California who were classified as non-exempt  
13 employees at any time during the Class Period"; (3) provisionally appointing Plaintiff as the  
14 representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.  
15 Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class  
16 Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that  
17 notice of the proposed settlement be given to the class; (7) appointing ILYM Group as Settlement  
18 Administrator, and (8) scheduling a final approval hearing date to consider Plaintiff's motion for  
19 final approval of the settlement and entry of the Judgment, and Plaintiff's motion for approval of  
20 attorneys' fees and expenses. Attached hereto as Exhibit #1 is a copy of the fully executed Class  
21 Action Settlement Agreement ("Agreement") along with exhibits thereto. This Declaration  
22 incorporates by reference the definitions in the Agreement, and all terms defined therein shall have  
23 the same meaning as set forth in the Agreement.

24  
25 Fairness of Settlement

26 3. As consideration for this Settlement, the Gross Settlement Amount is One Million  
27 Five Hundred Thousand Dollars (\$1,500,000) to be paid by Defendant, as set forth in the  
28 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the

1 Parties and will be made in full and final settlement of the Released Class Claims, consisting of the  
2 all payments of Settlement Shares to the Participating Class Members, Settlement Administration  
3 Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class  
4 Representative Service Payments and the PAGA Payment. The Gross Settlement Amount does not  
5 include the employer's share of payroll taxes which will be separately paid by Defendant. The  
6 Settlement is all-in with no reversion to Defendant and no need to submit a claim form.

7 4. The relief provided in the Settlement will benefit all members of the Class. The  
8 Settlement does not grant preferential treatment to Plaintiff or segments of the Class in any way.  
9 Payments to the Class Members are all determined under a neutral methodology. Each  
10 Participating Class Member who is will receive the same opportunity to participate in and receive  
11 payment through a neutral formula that is based upon the weeks worked by that individual.

12 5. On March 17, 2021, the Parties participated in an all-day mediation session presided  
13 over by Louis Marlin, a respected and experienced mediator of wage and hour class actions. In  
14 preparation for the mediation, Defendant provided Class Counsel with necessary information for the  
15 members of the Class, including time data, payroll data and data concerning the composition of the  
16 Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and  
17 prepared and submitted a mediation brief and damage valuation to the Mediator. At the conclusion  
18 of the all-day mediation, the Parties agreed to this Settlement. The final settlement terms were  
19 negotiated and set forth in the Agreement now presented for this Court's approval. Importantly,  
20 Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable and adequate.

21 6. Based upon 590 Class Members who collectively 30,000 work weeks, the Net  
22 Settlement Amount provided an average recovery of \$1,576 per Class Member and a recovery of  
23 \$31 per work week. The calculations to compensate for the amount due to the Class Members at  
24 the time this Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in  
25 advance of mediation. For the individuals whose claims are at issue in this Actions, Plaintiff  
26 analyzed the data for putative class members and determined the potential maximum damages for  
27 the class claims. For the Class, Plaintiff determined that the unpaid wages due to rounding were  
28 \$113,148, the maximum potential meal period damages were estimated to be \$1,146,062 based on a

1 maximum potential 47% violation rate in the time records, the maximum rest period damages were  
2 estimated to be \$2,339,846 using a 100% violation rate because of an alleged facially illegal policy,  
3 and the off-the-clock damages for donning and doffing were estimated to be \$605,520, and the  
4 alleged unpaid business expenses for cell phone usage were estimate to be \$203,166. In total, the  
5 damages for the Class were calculated to have a maximum total value of \$4,407,742. In addition,  
6 Plaintiff calculated that the maximum value of the waiting time penalties were \$1,745,556 and the  
7 maximum value of the wage statement penalties were \$1,239,900, however, these wage statement  
8 and waiting time penalties claims potentially have a much smaller value, even if damages were  
9 awarded, to the extent that they are derivative of the meal and rest break claims.<sup>1</sup> Consequently,  
10 the Gross Settlement Amount of \$1,500,000 represents more than 34% of the value of the potential  
11 maximum damages at issue for the Class in this case, assuming these amounts could all be proven  
12 in full at trial.<sup>2</sup> The above maximum calculations should then be adjusted in consideration for both  
13 the risk of certification and the risk of establishing class-wide liability on all claims. Given the  
14 amount of the Settlement as compared to the potential value of the claims, the Settlement is most  
15 certainly fair and reasonable.

#### 16 17 Procedural History of the Litigation

18 7. On June 2, 2020, Plaintiff filed a Class Action Complaint against Defendant in the  
19 \_\_\_\_\_

20 <sup>1</sup> Importantly, while Plaintiff alleged claims for statutory penalties pursuant to Labor Code  
21 Sections 203 and 226, Plaintiff recognized that these claims were subject to various defenses  
22 asserted by Defendant, including, but not limited to, a good faith dispute defense as to whether any  
23 premium wages for meal or rest periods or other wages were owed given Defendant's position that  
24 Plaintiff was properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584  
25 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith  
26 dispute as to whether and when the wages were due."). Additionally, Courts have held that  
27 violations of the meal and rest period regulations, which require payment of a "premium wage" for  
28 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.

<sup>2</sup> Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included  
the PAGA claim in this discussion. The PAGA claim is addressed in the Decl. Nordrehaug at ¶ 33.

1 Superior Court of the State of California, County of San Bernardino. Plaintiff asserted class claims  
2 for: (1) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay  
3 minimum wages in violation of Cal. Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay  
4 overtime wages in violation of Cal. Labor Code § 510; (4) failure to provide required meal periods  
5 in violation of Cal. Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in  
6 violation of Cal. Labor Code §§ 226.7 and 512; (6) failure to provide expense reimbursement in  
7 violation of Labor Code § 2802; (7) failure to provide accurate wage statements in violation of Cal.  
8 Labor Code §226; and, (8) failure to provide wages at termination in violation of Cal. Lab. Code §  
9 201, 202. On August 14, 2020, Defendant filed an Answer to Plaintiff's Class Action Complaint  
10 asserting thirty-six (36) affirmative defenses.

11 8. On September 8, 2020, Plaintiff filed a Representative Action Complaint against  
12 Defendant in the Superior Court of the State of California, County of San Bernardino for recovery  
13 of civil penalties for violation of the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq.  
14 ("PAGA"). The purported Labor Code violations alleged therein include: (1) Failure to pay  
15 minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (2) Failure to pay  
16 overtime wages in violation of California Labor Code § 510, et seq.; (3) Failure to provide required  
17 meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage  
18 Order; (4) Failure to provide required rest periods in violation of California Labor Code §§ 226.7 &  
19 512 and the applicable IWC Wage Order; (5) Failure to reimburse employees for required expenses  
20 in violation of California Labor Code § 2802; (6) Failure to provide accurate itemized wage  
21 statements in violation of California Labor Code § 226; and (7) Failure to provide wages when due  
22 in violation of California Labor Code §§ 201, 202 and 203.

23 9. On August 3, 2021, pursuant to the stipulation of the Parties, the Class Action and  
24 the Representative were consolidated by the Order of the Court.

25 10. Over the course of litigation, the Parties engaged in the investigation of the claims,  
26 including production of documents, class data, and other information, allowing for the full and  
27 complete analysis of liabilities and defenses to the claims in this Action. The information obtained  
28 by Plaintiff included: (1) data showing employees and their weeks of employment; (2) work time

1 data concerning hours worked and time punch data; (3) Defendant's employee wage and hour  
2 policies; (4) the employment files for the Plaintiff; and, (6) samples of wage statements provided by  
3 Defendant. Plaintiff and Defendant agreed to discuss resolution of the Action through a mediation.

4 11. Prior to mediation, the Parties engaged in the above investigation and the exchange  
5 of documents and information in connection with the Actions. On March 17, 2021, the Parties  
6 participated in an all-day mediation presided over by Louis Marlin, Esq., a respected and experience  
7 mediator of wage and hour class actions. Following the mediation, each side, represented by its  
8 respective counsel, were able to agree to settle the Action based on a mediator's proposal which was  
9 memorialized in the form of a Memorandum of Understanding. At all times, the negotiations were  
10 arm's length and contentious.

11 12. The Parties continued to negotiate the terms of the settlement and prepared the final  
12 Agreement which was signed by the Parties and is now presented to this Court for preliminary  
13 approval. Accordingly, for purposes of this Settlement, the "Class" is defined as "all individuals  
14 who are or previously were employed by Defendant in California who were classified as  
15 non-exempt employees at any time during the Class Period." (Agreement at ¶ I(C).) The "Class  
16 Period" is from June 2, 2016 to June 15, 2021. (Agreement at ¶ I(I).) The Class consists of an  
17 estimated total of 590 Class Members. (Agreement at ¶ III(C)(5).)

18 13. Although a settlement has been reached, Defendant denies any liability or  
19 wrongdoing of any kind associated with the claims alleged in the Action and further denies that, for  
20 any purpose other than settlement, the Action is appropriate for class treatment. Defendant  
21 contends, among other things, that it has correctly compensated the Class Members and complied at  
22 all times with the California Labor Code, applicable Wage Order, and all other laws and  
23 regulations. Further, Defendant contends that class certification would be inappropriate for any  
24 reason other than for settlement. Plaintiff contends that Defendant violated California wage and  
25 hour laws. Plaintiffs further contend that the Actions are appropriate for class certification on the  
26 basis that the claims meet the requisites for class certification. Without admitting that class  
27 certification is proper, Defendant has stipulated that the above Class may be certified for settlement  
28 purposes only. (Agreement at ¶ II(E).) The Parties agree that certification for settlement purposes

1 is not an admission that class certification would be proper if the class certification issue were  
2 litigated. Further, the Agreement is not admissible in this or any other proceeding as evidence that  
3 the Class could be certified absent a settlement. Solely for purposes of settling the Action, the  
4 Parties stipulate and agree that the requisites for establishing class certification with respect to the  
5 Class are satisfied.

6 14. Class Counsel has conducted a thorough investigation into the facts of the class  
7 action. Over the course of more than a year, Class Counsel has diligently evaluated the Class  
8 Members' claims against Defendant. Prior to the settlement negotiations, counsel for Defendant  
9 provided Class Counsel with access to necessary information for the Class. In addition, Class  
10 Counsel previously negotiated settlements with other employers in actions involving nearly  
11 identical issues and analogous defenses. Based on the foregoing data and their own independent  
12 investigation, evaluation and experience, Class Counsel believes that the settlement with Defendant  
13 on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of  
14 the Class in light of all known facts and circumstances, including the risk of significant delay,  
15 defenses asserted by Defendant, and potential appellate issues.

16  
17 Settlement Terms and Plan of Allocation

18 15. The Gross Settlement Amount is One Million Five Hundred Thousand Dollars  
19 (\$1,500,000). (Agreement at ¶ I(S).) Under the Settlement, the Gross Settlement Amount consists  
20 of the following elements: (1) payment of the Settlement Shares to the Class; (2) Class Counsel  
21 Fees Payment and Class Counsel Litigation Expenses Payment; (3) Settlement Administration  
22 Expenses; (4) the Class Representative Service Payment to Plaintiff; and (5) the PAGA Payment.  
23 (Agreement at ¶ III (B)-(C).) The Gross Settlement Amount does not include Defendant's share of  
24 payroll taxes. (Agreement at ¶ III(A).) The Gross Settlement Amount shall be all-in with no  
25 reversion to Defendant. (Agreement at ¶ III(A).)

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

1 days after the funding of of the Gross Settlement Amount. (Agreement at ¶ III(E)(9).)

2 17. The Net Settlement Amount shall equal the net amount available for payment to the  
3 Class after deducting the Court-approved amounts for the (1) Class Counsel Fees Payment; (2)  
4 Class Counsel Litigation Expenses Payment; (3) Class Representative Service Payment; (4) the  
5 Settlement Administration Expenses, and (5) the PAGA Payment, from the Gross Settlement  
6 Amount. (Agreement at ¶ I(U).) The Net Settlement Amount will be distributed as the Settlement  
7 Shares to the Class Members who do not timely request exclusion (“Participating Class Members”).  
8 (Agreement at ¶¶ I(X) and III(E)(1).) The Settlement Share will be calculated by: (a) dividing the  
9 Net Settlement Amount by the total number of Workweeks included in the Class Data to determine  
10 a dollar amount per week ("Weekly Rate"); and (iii) the Settlement Administrator shall then take  
11 the number of Workweeks worked by each Participating Class Member and multiply it by the  
12 Weekly Rate to calculate their Settlement Share. (Agreement at ¶ III(C)(2).) Workweeks will be  
13 based on Defendant’s records, however Class Members will have the right to challenge the number  
14 of workweeks.

15 18. Class Members may choose to opt-out of the Settlement by following the directions  
16 in the Class Notice. (Agreement at ¶ III(E)(3), Ex. A.) All Class Members who do not "opt out"  
17 will be deemed Participating Class Members who will be bound by the Settlement and will be  
18 entitled to receive a Settlement Share. All PAGA Aggrieved Employees, including those who  
19 submit an opt-out request, will still be paid their allocation of the PAGA Payment and will remain  
20 bound by the release of the PAGA Released Claims regardless of their request for exclusion.  
21 (Agreement at ¶ III(B)(3).) Finally, the Notice will advise the Class Members of their right to  
22 object to the Settlement and/or dispute their workweeks. (Agreement at ¶ III(E)(3), Ex. A.)

23 19. A Participating Class Member must cash his or her Settlement Share check within  
24 180 days after it is mailed. (Agreement at ¶ III(E)(10).) Any settlement checks not cashed within  
25 180 days will be voided and any funds from such uncashed checks will be paid to the California  
26 State Controller’s Unclaimed Property Fund in the name of the Participating Class Member.  
27 (Agreement at ¶ III(E)(10).)

28 20. Plaintiff selected and the Parties have agreed to use ILYM Group as the Settlement

1 Administrator. (Agreement at ¶ III(D).) From the Gross Settlement Amount, the Settlement  
2 Administrator shall be paid for the expenses of effectuating and administering the Settlement in an  
3 amount not to exceed \$15,000. (Agreement at ¶ III(B)(4).)

4 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded  
5 a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment.  
6 (Agreement at ¶ III(B)(2).) Class Counsel will also be allowed to apply separately for an award of  
7 Class Counsel Litigation Expenses Payment in an amount not to exceed \$20,000. (Agreement at ¶  
8 III(B)(2).) Subject to Court approval, the Agreement provides for a payment of no more than  
9 \$10,000 to the Plaintiff as his Class Representative Service Payment. (Agreement at ¶ III(B)(1).)

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

19  
20 Risks of Continued Litigation and Standards for Approval

21 23. Plaintiff and Class Counsel recognize the expense and length of continuing to litigate  
22 and trying this Action against Defendant through possible appeals which could take several years.  
23 Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in  
24 complex class actions such as this Action. Class Counsel is also mindful of and recognize the  
25 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based  
26 upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in  
27 the Agreement is in the best interest of the Class Members.

28 24. Here, a number of defenses asserted by Defendant present serious threats to the

1 claims of the Plaintiff and the other Class Members. Defendant asserted that Defendant's practices  
2 complied with all applicable Labor laws. Defendant argued that the off-the-clock work did not  
3 occur as it was against company policy and that the rounding was neutral on its face and therefore  
4 lawful under case law. See e.g. *AHMC Healthcare, Inc. v. Superior Court*, 24 Cal. App. 5th 1014  
5 (2018); *Silva v. See's Candy Shops, Inc.*, 7 Cal. App. 5th 235 (2016). Defendant also contend that  
6 their meal and rest period policies fully complied with California law and that Defendant's  
7 timekeeping system recorded meal periods, and was not required to record rest periods. Finally,  
8 Defendant could also argue that the recent Supreme Court decision in *Brinker v. Superior Court*, 53  
9 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to  
10 the meal and rest period claims. Defendant also argued that it acted in good faith and without  
11 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate  
12 wage statements. In fact, under the current state of the law, it is questionable whether these  
13 penalties could be awarded at all based upon the alleged meal and rest period violations. If  
14 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.  
15 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses  
16 have merit and therefore present a serious risk to recovery by the Class.

17 25. There was also a significant risk that, if the Action was not settled, Plaintiff would be  
18 unable to obtain class certification and thereby not recover on behalf of any employees other than  
19 themselves. Defendant argued that the individual experience of each putative class member varied  
20 with respect to the claims. Defendant could also contest class certification by arguing injury and  
21 good faith were case by case determinations that precluded class certification. Plaintiff is aware of  
22 cases where class certification of similar claims was denied. See e.g. *Cacho v. Eurostar, Inc.*, 43  
23 Cal. App. 5th 885 (2019) (denying certification of meal and rest break claims). Defendant also  
24 contended that individual differences in work experiences not only impacted damages but would  
25 also impact certification. Finally, even if class certification was successful, as demonstrated by the  
26 California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),  
27 there are significant hurdles to overcome for a class wide recovery even where the class has been  
28 certified. While other cases have approved class certification in wage and hour claims, class

1 certification in this action would have been hotly disputed and was by no means a foregone  
2 conclusion.

3 26. This settlement is therefore certainly entitled to preliminary approval. Were this  
4 case to go to trial, the Plaintiff and the other class members would need to prove, among other  
5 things, that wages were owed on a class-wide basis. This was and is a substantial risk.

6 27. Plaintiff will apply to the Court for Class Representative Service Payment in  
7 consideration for his service and for the risks undertaken on behalf of the class. (Agreement at ¶  
8 III(B)(1).) Plaintiff performed his duty admirably by working with Class Counsel. The Declaration  
9 of the Plaintiff is presented with this motion to support the reasonableness of the requested service  
10 award and to establish his adequacy to serve as the class representatives. At this stage, the  
11 requested service awards of \$10,000 are well within the accepted range of awards for purposes of  
12 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386  
13 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v.*  
14 *Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000  
15 service award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007  
16 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class  
17 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL  
18 4473183, \*7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in  
19 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, \*16-17 (N.D.Cal. Jan. 27 2007)  
20 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements  
21 ). As explained in *Glass*, service awards are routinely awarded to class representatives to  
22 compensate the employees for the time and effort expended on the case, for the risk of litigation, for  
23 the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the  
24 statutory rights of all employees. 2007 WL 221862 at \*16-17. Below, I provided a long list of  
25 similar Court-approved service awards.

26 28. The stage of the proceedings at which this Settlement was reached also militates in  
27 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has  
28 conducted a thorough investigation into the facts of the class action. Class Counsel began

1 investigating the Class Members' claims before the Action were filed. Class Counsel engaged in  
2 formal discovery and conducted a review and analysis of the relevant documents and data. Class  
3 Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated  
4 and settled similar claims in other actions. Accordingly, the agreement to settle did not occur until  
5 Class Counsel possessed sufficient information to make an informed judgment regarding the  
6 likelihood of success on the merits and the results that could be obtained through further litigation.

7         29. Based on the foregoing data and their own independent investigation and evaluation,  
8 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the  
9 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the  
10 Class in light of all known facts and circumstances, including the risk of significant delay, defenses  
11 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that  
12 Counsel for both parties possessed sufficient information to make an informed judgment regarding  
13 the likelihood of success on the merits and the results that could be obtained through further  
14 litigation.

15  
16 Class Certification Issues

17         30. Plaintiff contends that the proposed settlement meet all of the requirements for class  
18 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore,  
19 the Court may appropriately approve the Class as defined in the Agreement. This Court should  
20 conditionally certify the Class for settlement purposes only, defined as follows:

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

23             (Agreement at ¶ I(C).)

24             The Class Period is from June 2, 2016 to June 15, 2021. (Agreement at ¶ I(J).)

25             a.         **Numerosity** - Here, Plaintiff assert that the 590 current and former  
26 employees that comprise the Class can be identified based on Defendant's records and are  
27 sufficiently numerous for class certification.

28             b.         **Common Issues Predominate** - Here, Plaintiff contends that common

1 questions of law and fact are present, and specifically the common questions of whether the  
2 Defendant failed to provide meal and rest periods, whether class members worked off the clock,  
3 whether Defendant's rounding practices were facially lawful, whether Defendant failed to  
4 reimburse for necessary cell phone expenses, and whether Class Members are entitled to damages  
5 and/or penalties as a result of these practices.

6           c.       **Typicality** - In the instant case, Plaintiff contends that there can be little  
7 doubt that the typicality requirement is satisfied. The Plaintiff, like every other member of the  
8 Class, worked for Defendant as non-exempt employee during the Class Period. Plaintiff contends  
9 that, like every other member of the Class, he was subject to the same practices and policies of  
10 Defendant and would be subject to the same defenses. Thus, Plaintiff asserts that the claims of the  
11 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve  
12 the same employment policies and practices of Defendant, and are based on the same legal theories.

13           d.       **Adequacy** - Plaintiff contends that the Class Members are adequately  
14 represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest  
15 with other class members, and (b) will prosecute the case vigorously on behalf of the class. This  
16 requirement is met here. First, Plaintiff is well aware of his duties as the representative of the Class  
17 and has actively participated in the prosecution of this case to date. He effectively communicated  
18 with counsel, provided documents to counsel and participated in the investigation and negotiations  
19 in the Action. The Declarations of the Plaintiff is presented in support of this motion to establish  
20 his adequacy to represent the Class. Second, Plaintiff retained competent counsel who are  
21 experienced in employment class actions and who have no conflicts. Third, there is no antagonism  
22 between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class  
23 Members seek monetary relief under the same set of facts and legal theories.

24           31.       Blumenthal Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting  
25 class action lawsuits and can competently represent the Class. Other lawyers at my firm and I have  
26 extensive class litigation experience. We have handled a number of class actions and complex  
27 cases and have acted both as counsel and as lead and co-lead counsel in a variety of these matters.  
28 We have successfully prosecuted and obtained significant recoveries in numerous class action

1 lawsuits and other lawsuits involving complex issues of law and fact. My firm is particularly  
2 experienced in wage and hour employment law class actions, including claims for misclassification,  
3 overtime, expense reimbursement, unlawful deduction of wages, and missed rest and meal periods.  
4 Blumenthal Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over  
5 hundreds of wage and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has  
6 been found to be adequate counsel by the courts throughout California. We have been approved as  
7 experienced class counsel by both state and federal courts in California in contested class  
8 certification proceedings. A true and correct copy of the resume of my firm is attached hereto as  
9 Exhibit #2. Thus, the adequacy requirement is satisfied.

10 32. The Class Notice, drafted jointly and agreed upon by the Parties through their  
11 respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit  
12 "A" to the Agreement.) The Class Notice will include, among other information: (i) information  
13 regarding the Actions; (ii) the impact on the rights of the Class Members if they do not opt out; (iii)  
14 information to the Class Members regarding how to opt out and how to object to the Settlement;  
15 (iv) the estimated Settlement Share for each of the Class Members; (iii) the amount of attorneys'  
16 fees and expenses to be sought; (v) the amount of the Plaintiff's service award request; and (vi) the  
17 anticipated expenses of the Settlement Administrator. The Class Notice will state that the Class  
18 Members shall have forty-five (45) days from the date that the Notice is mailed to them to request  
19 exclusion (opt-out) or to submit an objection. (Agreement at ¶ III(E)(3).) Class Members shall be  
20 given the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses  
21 and to appear at the Final Approval Hearing. (Agreement at ¶ III(E)(3).) Class Members who do  
22 not submit a timely and proper request to opt-out will automatically receive a payment of their  
23 Settlement Share. This notice program was designed to meaningfully reach the Class Members and  
24 it advises them of all pertinent information concerning the Settlement. The mailing and distribution  
25 of the Class Notice satisfies the requirements of due process, and is the best notice practicable under  
26 the circumstances and constitutes due and sufficient notice to all persons entitled thereto.

1           33.     The PAGA Claim -

2                   a.       **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201  
3 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The  
4 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a  
5 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the  
6 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of  
7 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on  
8 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of  
9 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that  
10 primary consideration. "The LWDA recognizes that this Court does not review the PAGA  
11 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is  
12 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent  
13 class members." (LWDA Response at p.4).

14                   b.       **Valuation of the PAGA Claim.** For mediation, Plaintiffs' calculated the  
15 value of the alleged PAGA claim as to Aggrieved Employees for civil penalties to be between  
16 \$723,050 and \$1,446,100 for a single violation in every one of the 14,461 pay periods at issue in the  
17 PAGA Period, depending on whether the violation was \$50 per pay period as in the case of Labor  
18 Code § 558(a)(1) or the standard amount of \$100 per pay period for violation of Labor Code §  
19 1198. This valuation assumed that PAGA civil penalties would be awarded at the maximum rate  
20 per pay period but without stacking. The PAGA allocation in the Settlement is the amount of  
21 \$25,000. This allocation is justified by several important considerations. First, the PAGA claim  
22 was subject to the same risks as the underlying class claims. Second, Defendant asserted additional  
23 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.  
24 Defendant could also argue that no penalties prior to the PAGA notification should be awarded, and  
25 I am aware of one Court which has so ruled. These additional defenses present a risk to the PAGA  
26 claim and the potential that some or all of the PAGA penalties sought may not be awarded. Second,  
27 in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the court affirmed a judgment which  
28 only provided for a PAGA penalty of \$5 per violation. Therefore, at trial, any PAGA penalties

1 awarded could be significantly less than Plaintiff's calculation even where Plaintiff prevailed on the  
2 PAGA claim. Even if we assume that violations for all 14,461 pay periods were established, using  
3 the valuation from *Carrington* results in a more realistic recovery of \$72,305 under PAGA. This  
4 means that the \$25,000 PAGA allocation is more than 34% of this potential PAGA recovery.

5           c.       **Comparable PAGA Settlements.** In reaching the settlement of the PAGA  
6 claim, Class Counsel was also aware of what allocations other Courts have approved for similar  
7 PAGA settlements as compared to the total settlement amount. A settlement that allocates  
8 approximately 3% of the total settlement value to resolve PAGA claims is also supported by what  
9 has been approved in other wage-and-hour class settlements. Indeed, Courts typically approve  
10 PAGA settlement amounts in the range of between .27 to 1.7 percent of the total settlement. See  
11 *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of  
12 \$5,000 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S.  
13 Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for PAGA on a \$1.5 million class  
14 settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA  
15 Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs, Inc.*, 2014 U.S. Dist Lexis  
16 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA for PAGA out of \$1,750,000  
17 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, \*1 (N.D. Cal. 2011)  
18 (approving PAGA payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement);  
19 *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, \*13 (E.D. Cal. 2012) (approving PAGA  
20 payment of \$7,500 to the LWDA out of \$2.5 million common-fund settlement); *Hopson v.*  
21 *Hanesbrands Inc.*, 2009 WL 928133, \*9 (N.D. Cal. 2009) (approving PAGA allocation that was  
22 .49% of \$408,420.32 gross settlement); *Garcia v. Gordon Trucking, Inc.*, 10-cv-00324-AWI-SKO,  
23 Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement of \$3,700,000, with \$10,000 allocated to  
24 the PAGA claim); *McKenzie v. Federal Express Corp.*, CV 10-02420 GAF (PLAx), Dkt. 139 & 141  
25 (C.D. Cal.) (court approved a settlement in an amount of \$8.25 million, with \$82,500 allotted to the  
26 PAGA claim); *DeStefan v Frito-Lay*, 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class  
27 settlement of \$2 million, with \$10,000 allocated to PAGA); *Martino v. Ecolab Inc.*, No.  
28 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties or 0.48% of \$21,000,000

1 settlement amount); *East v. Comprehensive Educational Services Inc.*, Fresno Superior Court Case  
2 No. 11-CECG-04226 (2015) (\$10,000 allotted as PAGA penalties or 0.13% of \$7,595,846  
3 settlement amount); *Bararsani v. Coldwell Banker Residential Brokerage Company*, Los Angeles  
4 Superior Court Case No. BC495767 (2016) (\$10,000 allotted as PAGA penalties or 0.22% of  
5 \$4,500,000 settlement amount); *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D.  
6 Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.40% of \$3,775,000 settlement amount);  
7 *Scott-George v. PVH Corporation*. No., 2:13CV00441 (E.D. Cal. 2017) (\$15,000 allotted as PAGA  
8 penalties or 0.46% of \$3,250,000 settlement amount); *Nehrlich v. RPM Mortgage Inc.*, Orange  
9 County Superior Court Case No. 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as  
10 PAGA penalties or 0.40% of \$2,500,000 settlement amount); *Rubio v. KTI Incorporated*, San  
11 Bernardino Superior Court Case No. CIVDS-14-06132 (2015) (\$1,000 allotted as PAGA penalties  
12 or 0.18% of \$550,000 settlement amount); *Gray v. Mountain View Child Care Inc.*, San Bernardino  
13 Superior Court Case No. CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of  
14 \$675,000 settlement amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino  
15 Superior Court Case No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties or 0.33% of  
16 \$900,000 settlement amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles Superior Court No.  
17 BC471369 (2013) (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000 settlement amount);  
18 *Mejia v. DHL Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA  
19 penalties or 0.34% of \$1,450,000 settlement amount).

20       34.     Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the  
21 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and  
22 reasonable, and at the time of final approval, my firm will present lodestar to further support the  
23 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees  
24 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some  
25 of the class action awards obtained by Class Counsel in similar employment actions throughout the  
26 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total  
27 settlement value: On June 14, 2017, in *Smith v. Space Exploration* (Los Angeles Superior Court  
28 Case No. BC554258), Judge Elihu Berle awarded Class Counsel a 1/3 fee award in a wage and hour

1 class settlement. On March 23, 2018, in *Bailey v. Redfin*, (Los Angeles Superior Court, Case No.  
2 BC512191, the Court awarded a 1/3 fee award in a wage and hour class settlement. On July 10,  
3 2018, in *Zirpolo v. UAG Stevens Creek II* (Santa Clara Superior Court Case No. 17CV313457,  
4 Judge Brian Walsh awarded Class Counsel a one-third fee award in a wage and hour class  
5 settlement. On July 19, 2018, in *Metrow v. Liberty Mutual*, (U.S.D.C. Central District of California  
6 Case No. EDCV 16-01133-JGB), the District Court awarded Class Counsel a one-third fee award in  
7 a wage and hour class settlement. On December 4, 2018, in *Panda Express Wage and Hour Cases*  
8 (Los Angeles Superior Court, Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a  
9 one-third fee award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage*  
10 *and Hour Cases* (San Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded  
11 Class Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in  
12 *Erickson v. John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge  
13 Edward Weil awarded Class Counsel a one-third fee award in a wage and hour class settlement. On  
14 December 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case  
15 No. BC672235) Judge William Highberger awarded Class Counsel a one-third fee award in a wage  
16 and hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange  
17 County Superior Court Case No. JCCP 4957) Judge William Claster awarded Class Counsel a one-  
18 third award in a wage and hour class settlement. On February 11, 2020, in *Singh v. Total Renal*  
19 *Care* (San Francisco Superior Court Case No. CGC-16-550847) Judge Ethan Schulman awarded  
20 Class Counsel a one-third award in a wage and hour class settlement. On October 23, 2020, in  
21 *Ontiveros v. Baker Concrete*, (Santa Clara Superior Court Case No. 18CV328679) Judge Brian  
22 Walsh awarded Class Counsel a one-third fee award in a wage and hour class settlement. On  
23 December 3, 2020, in *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court  
24 Case No. 34-2018-00245842) Judge Christopher Krueger awarded BNBD a one-third fee award in a  
25 wage and hour class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los Angeles  
26 Superior Court Case No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third fee  
27 award in a wage and hour class settlement. A fee award equal to one-third of the common fund is  
28 therefore reasonable in light of the fees that have been awarded in other similar cases.

1           35.     Litigation Expenses - To date, Blumenthal Nordrehaug Bhowmik De Blouw LLP has  
2 incurred litigation expenses of \$14,263.82. These litigation expenses include the expenses incurred  
3 for filing fees, expert expenses (Berger Consulting), mediation expenses (Louis Marlin), attorney  
4 service charges (Knox, TurbocourtOne Legal) for Court filings, Courtcall and delivery charges, all  
5 of which are costs normally billed to and paid by the client. These costs were reasonably incurred  
6 by my firm in the prosecution of this matter and are set forth in detail in the contemporaneous  
7 billing records attached hereto as Exhibit #3.

8           36.     Class Representative Service Payments - The reasonableness of the requested service  
9 award is also established by reference to the amounts that other California courts have found to be  
10 reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*,  
11 Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service  
12 award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17,  
13 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No.  
14 BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award);  
15 *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County  
16 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*,  
17 Case No. BC438654, L.A. County Superior Court (Dec. 12, 2012)(awarding \$10,000 service  
18 awards to three named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No.  
19 BC417335, Los Angeles County Superior Court (Mar. 21, 2011)(awarding \$10,000 service award);  
20 *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795, Los Angeles County Superior Court (June,  
21 11, 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No.  
22 BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000 service award);  
23 *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los Angeles County Superior  
24 Court (May 27, 2011)(awarding \$10,000 service award); *Hickson v. South Coast Auto Ins.*  
25 *Marketing, Inc.*, Case No. BC390395, Los Angeles County Superior Court (Mar. 27,  
26 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case No. BC422934, Los  
27 Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service award); *Kambamba v.*  
28 *Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court, (Aug. 19,

2011)(awarding \$10,000 service award together with additional compensation for their general release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No. BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award); *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*, Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22, 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award); *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23, 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The Industrial Complany*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug. 1, 2018) (awarding \$10,000 service award).

37. Potentially Related Other Actions - This settlement resolves this Class Action and

1 the Representative Action which was already consolidated with this Action. The following are the  
2 details about the other cases pending against Defendant:

3 (a) *Imelda Murray v. DSV Solutions LLC*, San Bernardino County Superior  
4 Court Case No. CIVSB2118327, is a single-claim PAGA representative action filed on June 21,  
5 2021, which is after the mediation in this Action and about the same time the Parties executed the  
6 Agreement. The *Murray* complaint alleges a PAGA claim predicated on alleged violations for  
7 failure to pay minimum and overtime wages, failure to provide meal and rest periods and/or  
8 premium pay in lieu thereof, failure to pay all wages earned, and failure to provide accurate  
9 itemized wage statements. The *Murray* PAGA complaint is brought on behalf of all non-exempt CA  
10 employees since June 21, 2020. Accordingly, the *Alcocer* settlement subsumes the allegedly  
11 aggrieved employees in the *Murray* case, and the PAGA claims in both cases involve the same  
12 alleged wage-and-hour violations.

13 (b) In addition, there are other single-plaintiff cases pending against the  
14 Defendant in state court that the Parties do not anticipate to be affected by the proposed Settlement  
15 of this Action: (i) *Selena Maldonado v. DSV Solutions LLC, et al*, San Bernardino  
16 County Superior Court Case No. CIVDS2024412, is a single-plaintiff gender discrimination and  
17 wrongful termination lawsuit filed on November 6, 2020. Plaintiff Maldonado worked as a General  
18 Laborer for Defendants from November 11, 2019 until February 21, 2020. The case is currently  
19 pending. Parties do not expect this Settlement to affect the *Maldonado* case; (ii) *Carlos Guillen v.*  
20 *DSV Solutions LLC, et al*, San Bernardino County Superior Court Case No. CIVDS2004396, is a  
21 single-plaintiff wrongful termination and alleged disability discrimination lawsuit filed on February  
22 10, 2020. This case is currently pending. The Parties do not expect the proposed Alcocer settlement  
23 to affect the Guillen case; and, (iii) *Pedro Martinez v. DSV Solutions LLC, et al*, San Bernardino  
24 County Superior Court Case No. CIVDS1930925, is a single-plaintiff wrongful termination and  
25 alleged race discrimination lawsuit filed on January 15, 2019. This case is currently pending. The  
26 Parties do not expect the proposed Alcocer settlement to affect the Martinez case.

27 (c) Finally there is one more action pending against Defendant which alleges a  
28

1 Fair Credit Reporting Act class claim, *Joe Moreno v. DSV Solutions LLC*, San Bernardino County  
2 Superior Court Case No. 20STCV08509, filed on March 4, 2020. This case is currently pending.  
3 The Parties do not expect this Settlement to affect the *Sanchez* case as the class release in this case  
4 does not cover the FCRA claim alleged in *Sanchez*.

5 38. Settlement Administration - The estimate from ILYM Group was selected, as it  
6 provided for an estimated fee of \$13,992 to perform the settlement administration. A true and  
7 correct copy of the estimate from ILYM Group is attached hereto as Exhibit #4.

8  
9 I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct. Executed this 2nd day of November, 2021, at La Jolla, California.

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13 By:   
14 Kyle Nordrehaug  
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## 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](mailto:norm@bamlawca.com)  
[kyle@bamlawca.com](mailto: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](mailto: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 Alcocer (Jun 10, 2021 03:49 PDT)  
Plaintiff Fernando Alcocer, Jr.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael Marlow, President  
For Defendant DSV Solutions, LLC

E-Mail: [norm@bamlawca.com](mailto:norm@bamlawca.com)  
[kyle@bamlawca.com](mailto: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](mailto: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.

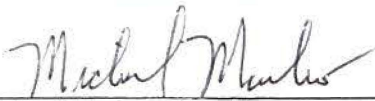
#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

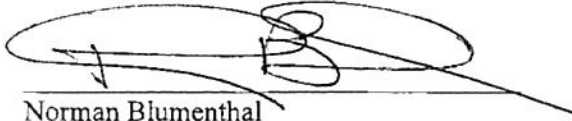
Dated: Jun 10, 2021

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

Dated: 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.**

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing and Receive a Payment</b>                             | <p>To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.</p> <p><b>Your estimated Settlement Share is: \$&lt;&lt;__&gt;&gt;. See the explanation in Section 5 below.</b></p> <p>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.</p> |
| <b>Exclude Yourself</b>                                             | <p>To exclude yourself, you must send a written request for exclusion to the Settlement Administrator as provided below. <b>If you request exclusion, you will receive no money from the Settlement and you will not be bound by the Settlement.</b></p> <p>Instructions are set forth in Section 7 below.</p>                                                                                                                                                                                                                                                |
| <b>Object</b>                                                       | <p>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.</p> <p>Directions are provided in Section 8 below.</p>                                                                                                                                                                                                                                                                                                                                                                |

**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](mailto:kyle@bamlawca.com)  
Website: [www.bamlawca.com](http://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](http://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  
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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.**

6

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.

6  
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.

21  
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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27 Dated: \_\_\_\_\_

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HON. DAVID COHN  
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT



**Blumenthal Nordrehaug Bhowmik De Blouw LLP**

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

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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

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

**Charlotte James**

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

**Christine Levu**

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

**Andrew Ronan**

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**REPORTED CASES**

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9<sup>th</sup> 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. 4<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (3<sup>rd</sup> 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 (9<sup>th</sup> 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)

### **CLASS ACTION & REPRESENTATIVE CASES**

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 Diary, 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 County, 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



BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP  
2255 CALLE CLARA  
LA JOLLA, CA 92037  
(858) 551-1223

NOVEMBER 2, 2021

FERNANDO ALCOCER

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RE: DSV SOLUTIONS LLC  
FILE NUMBER: CA2074.001

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COSTS ADVANCED

|          |                                               |          |
|----------|-----------------------------------------------|----------|
| 07/06/20 | FEE FOR DOCUMENTS FROM DOCKET                 | 3.50     |
| 07/10/20 | FILING FEE                                    | 594.36   |
| 07/10/20 | FEE FOR DOCUMENTS FROM DOCKET                 | 30.50    |
| 09/11/20 | FILING FEE                                    | 125.25   |
| 09/24/20 | FILING FEE                                    | 704.36   |
| 10/05/20 | LEGAL RESEARCH; PULLING DOCUMENTS FROM DOCKET | 6.00     |
| 11/17/20 | FILING FEE                                    | 125.25   |
| 12/28/20 | MEDIATION FEES - LOUIS MARLIN.                | 7,000.00 |
| 02/11/21 | FILING VIA TURBOCOURT FILINGS                 | 9.95     |
| 02/12/21 | FILING FEE                                    | 200.75   |
| 02/19/21 | APPEARANCE VIA COURTCALL                      | 94.00    |
| 02/23/21 | FILING VIA TURBOCOURT FILINGS                 | 9.95     |
| 02/23/21 | FILING VIA TURBOCOURT FILINGS                 | 9.95     |
| 02/27/21 | MESSENGER - KNOX                              | 110.75   |
| 03/27/21 | BERGER CONSULTING GROUP                       | 2,350.00 |
| 03/31/21 | KNOX ATTORNEY SERVICES                        | 23.75    |
| 04/01/21 | FILING VIA TURBOCOURT                         | 9.95     |
| 04/02/21 | LEGAL RESEARCH; DOWNLOADING DOCS FROM DOCKET  | 2.00     |

| <u>DATE</u>           | <u>DESCRIPTION</u>                                  | <u>AMOUNT</u> |
|-----------------------|-----------------------------------------------------|---------------|
| 04/05/21              | FILING VIA TURBOCOURT                               | 9.95          |
| 04/07/21              | TURBOCOURT FILING FEE                               | 9.95          |
| 04/15/21              | APPEARANCE VIA COURTCALL                            | 94.00         |
| 04/16/21              | APPEARANCE VIA COURTCALL                            | 94.00         |
| 04/16/21              | FILING VIA TURBOCOURT                               | 9.95          |
| 04/30/21              | MESSENGER - KNOX                                    | 1,210.75      |
| 07/20/21              | FILING VIA TURBOCOURT                               | 30.69         |
| 07/22/21              | REFUND FROM TURBOCOURT FOR REJECT FILING            | -20.00        |
| 07/30/21              | FILING VIA TURBOCOURT FILINGS                       | 30.69         |
| 07/31/21              | MESSENGER - KNOX                                    | 1,170.75      |
| 08/03/21              | FILING VIA TURBOCOURT FILINGS                       | 9.95          |
| 08/13/21              | COURT APPEARANCE VIA COURTCALL                      | 94.00         |
| 08/17/21              | REFUND FROM COURTCALL BC NO COURT APPEARANCE NEEDED | -94.00        |
| 09/03/21              | COURTCALL APPEARANCE FEE                            | 94.00         |
| 09/08/21              | FILING VIA ONELEGAL                                 | 108.87        |
|                       | TOTAL COSTS ADVANCED                                | \$ 14,263.82  |
| TOTAL CURRENT CHARGES |                                                     | \$ 14,263.82  |



# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

## Case Name: DSV Solutions

Requesting Attorneys Name: Kyle Nordrehaug  
 E-Mail: [kyle@bamlawca.com](mailto:kyle@bamlawca.com)  
 ILYM Contact: Sean Hartranft  
 E-Mail: [Sean@ilymgroupclassaction.com](mailto:Sean@ilymgroupclassaction.com)  
 Contact Number: 949.690.2564

### ESTIMATE FOR ADMINISTRATION SOLUTIONS

| ASSUMPTIONS                              |     |
|------------------------------------------|-----|
| Total Number of Class Members            | 650 |
| Estimated Mail Returned as Undeliverable | 20% |
| NCOA                                     | Yes |
| Certified Spanish Translation            | No  |
| Case Duration (Year(s))                  | 1   |

| Activity                                       | Rate Type | Unit Cost | Volume | Amount          |
|------------------------------------------------|-----------|-----------|--------|-----------------|
| CASE STARTUP                                   |           |           |        |                 |
| Initial Setup - Import and Formatting of Data* | Hourly    | \$150.00  | 3      | \$450.00        |
| Programming of Class Database                  | Hourly    | \$175.00  | 3      | \$525.00        |
|                                                |           |           |        | <b>Subtotal</b> |
|                                                |           |           |        | <b>\$975.00</b> |

*\*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

| PROJECT MANAGEMENT & NOTICING                                  |           |          |   |                   |
|----------------------------------------------------------------|-----------|----------|---|-------------------|
| Project Manager (Case notification and maintenance)            | Hourly    | \$120.00 | 7 | \$840.00          |
| Staff Hours for Processing Returned Mail                       | Hourly    | \$70.00  | 1 | \$70.00           |
| Staff Hours for Processing Opt-Outs, Dispute(s) & Objection(s) | Hourly    | \$70.00  | 4 | \$280.00          |
| Report Processing                                              | Hourly    | \$70.00  | 6 | \$420.00          |
| NCOA                                                           | Flat Rate | \$125.00 | 1 | \$125.00          |
| Toll Free Customer Service Representative                      | Flat Rate | \$175.00 | 1 | \$175.00          |
| Weekly Reports                                                 | Flat Rate | \$750.00 | 1 | Waived            |
|                                                                |           |          |   | <b>Subtotal</b>   |
|                                                                |           |          |   | <b>\$1,910.00</b> |

| NOTIFICATION/MAILING                         |           |          |     |                   |
|----------------------------------------------|-----------|----------|-----|-------------------|
| Fulfillment of Notice                        | Per Piece | \$1.50   | 650 | \$975.00          |
| USPS First Class 1oz Postage                 | Per Piece | \$0.55   | 650 | \$357.50          |
| Re-Mails (Forward/Skip trace Undeliverables) | Per Piece | \$2.00   | 130 | \$260.00          |
| Storage, Photocopies, Deliveries             | Flat Fee  | \$200.00 | 1   | \$200.00          |
|                                              |           |          |     | <b>Subtotal</b>   |
|                                              |           |          |     | <b>\$1,792.50</b> |

# ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

| Activity                                                   | Rate Type | Unit Cost  | Volume | Amount     |
|------------------------------------------------------------|-----------|------------|--------|------------|
| <b>DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)</b> |           |            |        |            |
| Distribution Setup & Management                            | Hourly    | \$150.00   | 6      | \$900.00   |
| Account Reconciliation & Distribution Reporting            | Hourly    | \$125.00   | 6      | \$750.00   |
| Check, Stub & Release - Print & Mail (W-2/1099)            | Per Check | \$1.50     | 650    | \$975.00   |
| USPS First Class 1oz Postage                               | Per Piece | \$0.55     | 650    | \$357.50   |
| Re-Mails (Forward/Skip trace Undeliverables up to 10%)     | Per Piece | \$2.00     | 39     | \$78.00    |
| Reminder Postcard, Includes Postage                        | Per Piece | \$0.90     | 260    | \$234.00   |
| Reminder Notice via Email and Social Media                 | Flat Fee  | \$150.00   | 1      | \$150.00   |
| Preparation of Taxes                                       | Hourly    | \$120.00   | 15     | \$1,800.00 |
| Annual Filing of Tax Return                                | Per Year  | \$1,500.00 | 1      | \$1,500.00 |

*\*Additional Bank fees may apply*

**Subtotal \$6,744.50**

|                                                         |          |          |   |          |
|---------------------------------------------------------|----------|----------|---|----------|
| <b>CASE CONCLUSION</b>                                  |          |          |   |          |
| Data Manager Final Reporting                            | Hourly   | \$100.00 | 6 | \$600.00 |
| Project Manager Final Reporting                         | Hourly   | \$120.00 | 6 | \$720.00 |
| Processing Unclaimed Funds to State Controller's Office | Flat Fee | \$750.00 | 1 | \$750.00 |
| Declaration                                             | Hourly   | \$125.00 | 4 | \$500.00 |

**Subtotal \$2,570.00**

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**TOTAL CASE ESTIMATE: \$13,992.00**

# Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

**Services:** Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

**Mailing and Data Conversion:** ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

**Charges for Services:** Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

**Indemnification:** Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

**Payment of Charges:** ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

**Confidentiality:** ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

**Data Rights:** ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

**Document Retention:** Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

**Limitation of damages:** ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

**Termination:** The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

**Notice:** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

**Force Majeure:** To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

**Waiver of Rights:** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

**Jurisdiction:** The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

**Entire Agreement:** These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.