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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 DAVID ETTEGGUI, an individual, on
15 behalf of himself and on behalf of all
16 persons similarly situated,

17 Plaintiffs,

18 vs.

19 WB STUDIO ENTERPRISES INC., a
20 corporation; and DOES 1 through 50,
21 inclusive,

22 Defendant.

CASE No. **2:20-cv-08053-MCS-(JDEx)**

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

Hearing Date: November 8, 2021
Hearing Time: 9:00 a.m.

District Judge: Hon. Mark C. Scarsi
First Street Courthouse
Courtroom 7C

1 I, KYLE R. NORDREHAUG, declare as follows:

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

7 2. This declaration is being submitted in support of the Plaintiffs’ Motion For
8 Preliminary Approval of Class Action Settlement. Lodged herewith as Exhibit #1 is a
9 copy of the fully executed Class Action Settlement Agreement (“Agreement”) with
10 Defendant WB Studio Enterprises Inc. (“Defendant”), along with exhibits thereto.
11 Capitalized terms in this Declaration have the same meaning as contained in the
12 Agreement.

13
14 Fairness of Settlement

15 3. Counsel for Plaintiff and Defendant (collectively the “Parties”), after
16 litigation and contentious settlement negotiations, agreed to a settlement that is fair,
17 reasonable, and favorable to the Class, which is defined as “all individuals who worked
18 for Defendant in California as non-exempt employees who were Tour Guides/Floaters
19 as at any time during the Class Period.” (Agreement at ¶ I(C).)

20 4. Under the terms to which the Parties have agreed, Defendant agrees to pay
21 Seven Hundred Twenty Thousand Dollars (\$720,000) (the “Gross Settlement Amount”)
22 with no reversion in consideration for the settlement and the release of claims as
23 described in the Agreement. (Agreement at ¶ I(T).)

24 5. This is an all-in Settlement. There is no reversion of any portion of the
25 Gross Settlement Amount to Defendant, and no claim form is required to be paid.
26 (Agreement at ¶ I(T).) Class Members who do not opt-out of the Class by timely
27 submitting an opt-out request shall be automatically paid their share of the Net
28 Settlement Amount. (Agreement at ¶ III(D).)

1 6. This is an excellent result for Class Members and Aggrieved Employees.
2 The litigation risks that the Plaintiff, Class Members, and Aggrieved Employees face if
3 the case were not settled include, among other things, an adverse decision on contested
4 class certification and manageability, an adverse decision on the merits, loss of motions
5 which would result in limiting any exposure, the possibility that a trial would return a
6 less favorable verdict, and possible appellate review. Liability in this case was uncertain
7 because the trier of fact, may have found that some or all of the Class Members and
8 Aggrieved Employees were properly compensated and/or that Defendant complied with
9 applicable law. Class Counsel and Plaintiff wish to avoid these risks and uncertainties,
10 as well as the consumption of time and resources of litigation, through settlement
11 pursuant to the terms and conditions of the Agreement, which was reached through arm's
12 length negotiations before Jeffrey Krivis, an experienced mediator of employment class
13 actions.

14
15 Procedural History of the Litigation

16 7. On February 17, 2020, Plaintiff sent a correspondence to the Labor and
17 Workforce Development Agency ("LWDA") and Defendant outlining various alleged
18 violations of the California Labor Code under Private Attorneys General Act, Cal. Labor
19 Code §§ 2698 et seq. ("PAGA").

20 8. On June 29, 2020, Plaintiff, on behalf of himself and all persons similarly
21 situated, commenced the Class Action by filing a class action Complaint against
22 Defendant in the Superior Court of California, Los Angeles County, alleging the
23 following causes of action: (1) unfair competition in violation of Cal. Bus. & Prof. Code
24 §§ 17200, *et seq.*; (2) failure to pay minimum wages in violation of California Labor
25 Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of Cal.
26 Labor Code §§ 510, *et seq.*; (4) failure to provide meal periods in violation of Cal. Labor
27 Code §§ 226.7 and 512 and the applicable IWC Wage Order; (5) failure to provide rest
28 periods in violation of Cal. Labor Code §§ 226.7 and 512 and the applicable IWC Wage

1 Order; (6) failure to provide reimbursements in violation of California Labor Code §
2 2802; (7) failure to provide accurate itemized wage statements in violation of Cal. Labor
3 Code § 226; (8) failure to pay wages when due in violation of Cal. Labor Code §§ 201,
4 202, and 203; (9) wrongful termination of Plaintiff in violation of public policy and
5 California Labor Code § 1102.5; and (10) retaliation against Plaintiff in violation of
6 public policy and California Labor Code § 1102.5. On September 2, 2020 Defendant
7 removed the Class Action to the United States District Court, Central District of
8 California. On November 09, 2020, Plaintiff filed a First Amended Complaint with the
9 same claims alleged in the initial complaint. On December 28, 2020, the United States
10 District Court, Central District of California granted in part and denied in part
11 Defendant's Motion to Dismiss Plaintiff's First Amended Complaint without leave to
12 amend. [Doc. No. 35]. On January 11, 2021, Defendant filed its Answer, with eighteen
13 (18) affirmative defenses to the Class Action Complaint.

14 9. On October 19, 2020, Plaintiff filed a separate Representative Action
15 Complaint against Defendant in the Superior Court of the State of California, County of
16 Los Angeles, Case No. 20BBCV00719. Plaintiff asserted claims that Defendant: violated
17 the Private Attorney General Act, California Labor Code §§ 2698, et seq. ("State Court
18 PAGA Action") based on the same conduct alleged in the Class Action Complaint. As
19 part of this Settlement, Plaintiff filed a Second Amended Complaint to add the PAGA
20 claim from the State Court PAGA Action to this Action. [Doc. No. 67].

21 10. Class Counsel conducted significant discovery, research and investigation
22 in furtherance of the prosecution of the Action. This discovery, investigation, research
23 and prosecution included, among other things, (a) formal discovery and multiple
24 conferences between counsel; (b) inspection and analysis of hundreds of pages of
25 documents and other information produced by Plaintiff and Defendant formally during
26 the litigation of the Action and informally in preparation for mediation (including class
27 data); (c) analysis of the numerous legal positions taken by Defendant; (d) investigation
28 into the viability of class treatment of the claims; (e) analysis of potential class-wide

1 damages, including reviewing class data, and analyzing information sufficient to
2 understand Defendant's potential defenses; (f) research of the applicable law with respect
3 to the claims asserted as well as potential defenses; and (g) assembling and analyzing
4 extensive data and information for calculating damages.

5 11. Class Counsel has extensive experience in litigating wage and hour class
6 actions in California. The Parties have vigorously litigated the Action since its inception.
7 During the course of litigation, the Parties each performed analysis of the merits and
8 value of the claims. Plaintiff engaged in extensive investigation, requiring the
9 production of hundreds of pages of documents, including records as to members of the
10 Class. Plaintiff and Defendant have engaged in substantial research, discovery, and
11 investigation in connection with the Action. Class Counsel has thoroughly analyzed the
12 value of the claims during the prosecution of this Action.

13 12. Following the extensive investigation by both Parties, the Parties agreed to
14 engage in private mediation. The Parties attended an all-day mediation on April 28,
15 2021 before Jeffrey Krivis, a respected and experienced mediator. The mediation
16 included discussion and examination of the Parties' respective positions on the legal and
17 factual issues raised on behalf of the Class Members and Aggrieved Employees. At all
18 times, the Parties' settlement negotiations have been non-collusive, adversarial, and at
19 arm's length. The Parties agreed on the basic terms of a class and PAGA settlement
20 pursuant to a Memorandum of Understanding executed following the mediation, ongoing
21 post-mediation discussions and a mediator's proposal. The Parties then negotiated the
22 final Agreement now submitted for this Court's consideration.

23
24 The Settlement Terms and the Plan of Allocation

25 13. To implement the terms of this Settlement, Defendant agrees to pay the
26 Gross Settlement Amount of Seven Hundred Twenty Thousand Dollars (\$720,000) in
27 full and complete satisfaction of the Class Members' Released Claims. (Agreement at
28 ¶ III(B).) The Gross Settlement Amount consists of all payments to Class Members from

1 the Net Settlement Amount, and includes (a) the costs of administration of the
2 settlement, (b) all attorneys' fees and costs, (c) a service award to the Plaintiff, and (d)
3 the PAGA Payment to the LWDA and the Aggrieved Employees. (Agreement at ¶
4 III(C)-(D).) The amount remaining in the Gross Settlement Amount after the deduction
5 of Court-approved amounts for Class Counsel Fees Payment, Class Counsel Litigation
6 Expenses Payment, the Class Representative Service Payment, the PAGA Payment, and
7 the Settlement Administration Expenses (called the "Net Settlement Amount") shall be
8 allocated to Class Members as their Settlement Shares. (Agreement at ¶¶ I(V) and
9 III(D).)

10 14. From the Net Settlement Amount, the Settlement Share for each
11 Participating Class Member will be calculated by (a) dividing the Net Settlement
12 Amount by the total number of workweeks worked by the Participating Class Members
13 while Defendant's Studio Tour was running and operational during the Class Period to
14 determine a dollar amount per week ("Weekly Rate"), and (b) multiplying the total
15 number of workweeks worked by each Participating Class Member while Defendant's
16 Studio Tour was running and operational during the Class Period by the Weekly Rate.
17 (Agreement at ¶ III(D)(2).)

18 15. Within thirty (30) days of the Effective Date, Defendant shall transfer the
19 Gross Settlement Amount to the Settlement Administrator. (Agreement at ¶ III(F)(11).)
20 Thereafter, the distribution of Settlement Shares to Participating Class Members shall
21 be made by the Settlement Administrator within fifteen (15) days after Defendant funds
22 the Gross Settlement Amount. (Agreement at ¶ III(F)(11).) Checks issued shall remain
23 valid and negotiable for one hundred eighty (180) days, and any funds not distributed
24 after the expiration of the settlement checks will be paid to the California Controller's
25 Unclaimed Property Fund in the name of and for the benefit of the individual who did
26 not cash their check. (Agreement at ¶ III(F)(12).)

27 16. The scope of the release by all Class Members who do not opt out tracks
28 the scope of the allegations in the Action. Upon the Effective Date and full funding, all

1 Participating Class Members shall irrevocably release the following claims against
2 Defendant and the Released Parties:

3 any and all claims, liabilities, rights, demands, suits, matters, obligations,
4 liens, damages, losses, costs, expenses, debts, actions, and causes of action,
5 of every kind and/or nature whatsoever, which any Participating Class
6 Member now has or at any time ever had against any of the Released
7 Parties that is alleged in the operative Complaint or that could have been
8 alleged based on the facts alleged in the operative Complaint, including: (a)
9 meal period penalties allegedly owed to the Participating Class Members
10 by Defendant during the Class Period; (b) rest period penalties allegedly
11 owed to the Participating Class Members by Defendant during the Class
12 Period; (c) violation or alleged violation of California Labor Code Sections
13 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial
14 Commission Wage Order or other statute or regulation regarding meal and
15 rest periods; (d) attorneys' fees due or allegedly due under California Labor
16 Code or any other statute, regulation, or contractual provision providing for
17 such fees in connection with the operative Complaint; and (e) penalties or
other payments which are based on any of the foregoing, including
penalties, premiums, or payments under California Labor Code Sections
201, 202, 203, 226, 226.7, 512, and 2802 and/or any violation of the
California Industrial Commission Wage Order alleged in the operative
Complaint ("Released Class Claims"). Without in any way limiting the
foregoing, the Released Class Claims shall include all claims, liabilities,
rights, demands, suits, matters, obligations, liens, damages, losses, costs,
expenses, debts, actions, and causes of action under statutes and regulations
set forth in this Section G.1., whether enforced directly or pursuant to
California Labor Code Section 2699, California Business and Professions
Code Section 17200, et seq., or any other mechanism. The Released Class
Claims do not include claims for vested benefits, wrongful termination,
unemployment insurance, disability, social security, workers'
compensation, and claims outside of the Class Period.

18 (Agreement at ¶ III(G)(1).)

19 17. Subject to Court approval, the Parties have agreed that \$20,000 of Gross
20 Settlement Amount will be allocated to the Aggrieved Employees' Claims, of which 75%
21 (\$15,000) shall be allocated to the Labor Workforce Development Agency ("LWDA")
22 as the LWDA's share of the settlement of civil penalties and 25% (\$5,000) will be
23 distributed to the Aggrieved Employees based on the number of workweeks worked
24 while Defendant's Studio Tour was running and operational during the PAGA Period.

25 (Agreement at III(C)(3) and Paragraph III(D)(5).)

26 18. The scope of the release by all Aggrieved Employees tracks the scope of
27 the allegations in the Action. Upon the Effective Date and full funding, all Aggrieved
28 Employees shall irrevocably release the following claims against Defendant and the

Released Parties:

any and all PAGA claims for civil penalties pled in the operative Complaint or in the Class Representative's letter to the LWDA, dated February 17, 2020, which arose during the PAGA Period or could have been alleged based on the factual allegations contained in the operative Complaint or the letters sent by Plaintiff that occurred during the PAGA Period as to the Aggrieved Employees, including: (a) PAGA claims predicated on meal period penalties allegedly owed to the Aggrieved Employees by Defendant during the PAGA Period; (b) PAGA claims predicated on rest period penalties allegedly owed to the Aggrieved Employees by Defendant during the PAGA Period; (c) PAGA claims predicated on violation or alleged violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order or other statute or regulation regarding meal and rest periods; (d) attorneys' fees due or allegedly due under PAGA in connection with the operative Complaint; and (e) PAGA penalties which are based on any of the foregoing, including PAGA penalties predicated on penalties, premiums, or payments allegedly due under California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order. ("Released PAGA Claims"). The Released PAGA Claims exclude any PAGA claims outside the PAGA Period. 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.

(Agreement at ¶ III(G)(2).)

19. Subject to Court approval, the Parties have agreed on Simpluris to administer the settlement in this action ("Settlement Administrator"). (Agreement at ¶ III(E).) The Settlement Administrator will be paid for administration in an amount not to exceed \$20,000. (Agreement at ¶ III(C)(4).)

20. Class Counsel will apply to the Court for an award of reasonable attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount, and for reimbursement of reasonable expenses in an amount not to exceed \$20,000, subject to Court approval. (Agreement at ¶ III(C)(2). Class Counsel's current lodestar exceeds the requested fee award. The Plaintiff will also apply for Court approval of a service award in an amount not to exceed \$10,000 in consideration for his service as the class representative. (Agreement at ¶ III(C)(1).)

Factors Supporting Settlement Approval

21. This settlement is the result of extensive and hard fought negotiations.

1 Defendant denies each and every one of the claims and contentions alleged in this
2 Action. Defendant has asserted and continues to assert many defenses thereto, and has
3 expressly denied and continues to deny any wrongdoing or legal liability arising out of
4 the conduct alleged in the Action. Settlement negotiations took place between
5 experienced counsel. Counsel for the Parties engaged in formal mediation and
6 settlement negotiations and because the Parties were unable to reach a settlement on the
7 day of the mediation, had ongoing negotiations post-mediation. Only after extensive,
8 noncollusive negotiations, the Parties reached an agreement based on a mediator's
9 proposal, the experience of counsel, and the uncertainties of protracted litigation.
10 Importantly, Plaintiff and Class Counsel believe that this settlement is fair, reasonable
11 and adequate.

12 22. Class Counsel has conducted a thorough investigation into the facts of the
13 class and PAGA action, including a review of relevant documents and data and a diligent
14 investigation of the Class Members' and Aggrieved Employees' claims against
15 Defendant. Class Counsel also retained an expert to prepare a damage valuation for use
16 in the mediation and negotiations. Class Counsel also has experience in settlements
17 involving similar claims brought on behalf of employees. The Parties and their counsel
18 recognize that, in the absence of an approved settlement, they would face a protracted
19 litigation course, including but not limited to a contested motion for certification, a
20 motion for summary judgment, and trial and appellate proceedings that would consume
21 time and resources and present each of them with ongoing litigation risks and
22 uncertainties..

23 23. Plaintiff and Class Counsel recognize the expense and length of continuing
24 to litigate and trying this Action against Defendant through possible appeals, which
25 could take several years, especially in complex actions such as this litigation. Class
26 Counsel is also mindful of and recognize the inherent problems of proof under, and
27 alleged defenses to, the claims asserted in the Action. Based on the foregoing documents
28 and data, and their own independent investigation and evaluation, Class Counsel is of the

1 opinion that the settlement with Defendant for the consideration and on the terms set
2 forth in the Settlement is fair, reasonable, and adequate in light of all known facts and
3 circumstances, including the risk of significant delay, defenses asserted by Defendant,
4 and numerous potential appellate issues.

5 24. The Gross Settlement Amount provides an average value of \$1,139 per
6 Class Member and \$22.50 per workweek, and after deductions, the Net Settlement
7 Amount provides an average recovery of \$648 per Class Member and \$12.81 per work
8 week. In advance of negotiations, Class Counsel received class data concerning
9 employment and payroll information, which permitted Class Counsel to make an
10 intelligent evaluation. The calculations to compensate for the amount due for the Class
11 at the time of the mediation were calculated by Berger Consulting, Plaintiff's damage
12 expert. As to the Class whose claims are at issue in this Action, Plaintiff used an expert
13 (Berger Consulting) to analyze the data and determine the potential unpaid wages for the
14 employees. The maximum potential damages were calculated to be \$462,778 for meal
15 periods at a 28% violation rate after accounting for meal period premiums paid to the
16 Class, \$1,686,796 for rest period damages at a 100% violation rate based upon an
17 Plaintiff's on-duty rest period theory, and this Court's Order [Doc. No. 35] dismissed the
18 claims for minimum wages and overtime. As a result, the total damage valuation was
19 therefore calculated that Defendant was subject to a maximum damage claim in the
20 amount of \$2,149,574. As to potential penalties, Plaintiff calculated that wage statement
21 penalties were a maximum of \$875,150 and potential waiting time penalties were
22 \$1,656,474, however, these wage statement and waiting time penalties claims potentially
23 have a much smaller value, even if damages were awarded, to the extent that they are
24 only derivative of the meal and rest break claims.¹ Consequently, the Gross Settlement
25

26 ¹ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code
27 Sections 203 and 226, Plaintiffs recognized that these claims were subject to various
28 defenses asserted by Defendant, including, but not limited to, a good faith dispute
defense as to whether any premium wages for meal or rest periods or other wages were

1 Amount of \$720,000 represents more than 33% of the value of the damages at issue in
2 this case at the time this Settlement was negotiated, assuming these amounts could be
3 proven at trial. Given the amount of the settlement as compared to the potential value of
4 claims in this case and the defenses asserted by Defendant, this settlement is fair and
5 reasonable. Clearly the goal of this litigation to obtain redress for the Class has been met.

6 25. Here, a number of defenses asserted by Defendant presented serious threats
7 to the claims of Plaintiff and the other Class Members and Aggrieved Employees.
8 Defendant contends that Defendant's employment practices complied with all applicable
9 Labor laws, including Wage Order 12-2001. Defendant further contends that federal law
10 preempts the meal period claims of Plaintiff, the Class Members and the Aggrieved
11 Employees because their right to meal penalties arises exclusively from and requires
12 interpretation and analysis of a collective bargaining agreement that was applicable to
13 their employment with Defendant. Defendant successfully convinced this Court that
14 claims for minimum wages and overtime were barred. Defendant also argued that the
15 California Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
16 (2012), weakened Plaintiff's claims, on liability, value, class certifiability, and
17 manageability. Finally, several Courts have held that meal and rest period violations do
18 not give rise to wage statement or waiting time penalties. See e.g. *Ling v. P.F. Chang's*
19 *China Bistro, Inc.*, 245 Cal. App. 4th 1242, 1261 (2016). If successful, Defendant's
20 defenses could eliminate or substantially reduce any recovery to the Class. While
21 Plaintiff believes that these defenses could be overcome, Defendant maintains these

22 _____
23 owed given Defendant's position that Plaintiff were properly compensated. See
24 *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful
25 failure to pay wages if the employer and employee have a good faith dispute as to
26 whether and when the wages were due."). Additionally, Courts have held that violations
27 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 Plaintiffs' claims on these theories is uncertain.

1 defenses have merit and therefore present a serious risk to recovery for Plaintiff, the
2 Class Members, and the Aggrieved Employees.

3 26. Moreover, there was also a significant risk that, if the Action was not
4 settled, Plaintiff would be unable to obtain class certification and maintain a certified
5 class through trial or demonstrate that his PAGA claim is manageable, and thereby not
6 recover on behalf of any employees other than themselves. At the time of the mediation,
7 Defendant forcefully opposed the propriety of class certification and the manageability
8 of Plaintiff's PAGA claim, arguing that individual issues precluded such findings.
9 Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S.*
10 *Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for
11 a class-wide recovery even where the class has been certified. While other cases have
12 approved class certification in wage and hour claims, class certification in this action
13 would have been hotly disputed and was by no means a foregone conclusion.

14 27. Finally, the proposed method of distribution will be effective as payments
15 will be made automatically to every Participating Class Member and Aggrieved
16 Employees, without the need to submit a claim form. The Agreement sets forth all the
17 terms of Settlement, and there are no other agreements between the Parties that would
18 need to be identified under Rule 23(e)(3).

19 28. The stage of the proceedings at which this settlement was reached also
20 militates in favor of preliminary approval and ultimately, final approval of the settlement.
21 Class Counsel has conducted a thorough investigation into the facts of the class action.
22 Plaintiff performed extensive written discovery and obtained a production of documents
23 from the Defendant. In advance of mediation, Defendant also provided information
24 necessary for Class Counsel to intelligently negotiate a settlement. Class Counsel
25 engaged in a thorough review and analysis of the relevant documents and data with the
26 assistance of an expert, Berger Consulting. Class Counsel was also experienced with the
27 claims at issue here, as Class Counsel previously litigated and settled similar claims in
28 numerous other actions. Accordingly, the agreement to settle did not occur until Class

1 Counsel possessed sufficient information to make an informed judgment regarding the
2 likelihood of success on the merits and the results that could be obtained through further
3 litigation.

4 29. Plaintiff engaged in a full investigation of the claims with the necessary
5 data and documentation. The Parties then engaged in an all-day mediation, conducted
6 by a mediator with experience in employment class actions, engaged in additional
7 settlement negotiations post-mediation, and agreed to settle this Action pursuant to the
8 terms and conditions of a proposal provided by the mediator. Based on the foregoing
9 information and data and their own independent investigation and evaluation, Class
10 Counsel is of the opinion that the settlement with Defendant for the consideration and
11 on the terms set forth in the Agreement is fair, reasonable, and adequate, and is in the
12 best interest of the Class Members and Aggrieved Employess in light of all known facts
13 and circumstances, including the risk of significant delay, defenses asserted by
14 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel
15 for the Parties possessed sufficient information to make an informed judgment regarding
16 the likelihood of success on the merits and the results that could be obtained through
17 further litigation.

18
19 Class Certification For Purposes of Settlement

20 30. The proposed settlement meets all of the requirements for certifying a
21 settlement class under Fed. R. Civ. Proc. 23(b)(2) as demonstrated below, and therefore,
22 the Court may appropriately approve the Class as defined in the Agreement. For
23 purposes of settlement only, this Court should conditionally certify the Class defined as
24 “all individuals who worked for Defendant in California as non-exempt employees who
25 were Tour Guides/Floaters as at any time during the Class Period.” (Agreement at ¶
26 I(C).)

27 a. Here, the Class is composed of approximately 632 individuals in the
28 Class, which Plaintiff contends is sufficiently numerous for settlement purposes.

1 Attached hereto as Exhibit #2 is a true and correct copy of the Declaration of Shelly
2 Kunz which verifies these figures.

3 b. Here, Plaintiff contends that common questions of law and fact are
4 present, specifically the common questions of whether Defendant's employment practices
5 were lawful, whether Defendant failed to properly provide and/or pay for meal and rest
6 periods, whether the meal period claims are preempted by federal law because of the
7 applicable collective bargaining agreement, whether Defendant's conduct was willful,
8 and whether the Class is entitled to compensation and related penalties. Plaintiff
9 contends that certification of this Class is appropriate because Defendant purportedly
10 engaged in uniform practices with respect to the Class Members. As a result, these
11 common questions of liability could be answered on a class wide basis.

12 c. In the instant case, Plaintiff contends that the typicality requirement
13 is fully satisfied. Plaintiff, like every other member of the Class, was employed by
14 Defendant as non-exempt employees in the Tour Guide / Floater position, and, like every
15 other member of the Class, was subject to the same employment practices concerning
16 meal and rest periods. Plaintiff, like every other member of the Class, also claims owed
17 compensation as a result of the Defendant's uniform policies and practices. Thus, the
18 claims of Plaintiff and the members of the Class arise from the same course of conduct
19 by Defendant, involve the same issues, and are based on the same legal theories.

20 d. Plaintiff is well aware of his duties as the representatives of the Class
21 and has actively participated in the prosecution of this case to date. Plaintiff effectively
22 communicated with Class Counsel, provided documents and information to Class
23 Counsel, and participated extensively in the investigation of the Action. The personal
24 involvement of the Plaintiff was essential to the prosecution of the Action and the
25 monetary settlement reached.

26 e. Here, Plaintiff contends that the adjudication of the common issues
27 surrounding Defendant's uniform and systematic employment policies applicable to non-
28 exempt employees working as Tour Guides / Floaters could establish Defendant's

1 liability on a class-wide basis. Plaintiff contends that Defendant engaged in a uniform
2 course of failing to properly pay for wages and provide meal/rest periods, which resulted
3 in a systematic failure to provide compensation as required by law and that Defendant's
4 policies with respect to these issues are uniform. The only question is whether
5 Defendant's conduct supports a meritorious claim for liability. Accordingly, Plaintiff
6 maintains that the common issues of law and fact present in this case predominate.

7 31. Class Counsel is experienced in prosecuting class action lawsuits and
8 can competently represent the Class. For example, other lawyers at my firm and I have
9 extensive class litigation experience. We have handled many class actions and complex
10 cases and have acted both as counsel and as lead and co-lead counsel in a variety of these
11 matters. We have successfully prosecuted and obtained significant recoveries in
12 numerous class action lawsuits and other lawsuits involving complex issues of law and
13 fact. Class Counsel has been involved as class counsel in over hundreds of wage and
14 hour class action and PAGA action matters. My firm has been approved as class counsel
15 by state and federal courts throughout California. A true and correct copy of the resume
16 of my firm is attached hereto as Exhibit #3.

17
18 Class Notice

19 32. The Class Notice includes information regarding the nature of the Action;
20 a summary of the substance of the Settlement, including Defendant's denial of liability;
21 the definition of the Class; the definition of the Aggrieved Employees; the procedure and
22 time period for objecting to the Settlement, exclusion from the Settlement and
23 participating in the Settlement; a statement that the District Court has preliminarily
24 approved the Settlement; and information regarding the calculation of Settlement Shares.
25 See Exhibit A to the Agreement. The Class Notice further explains that Class Members
26 who wish to participate in the settlement do not have to anything to claim their share of
27 the Settlement. The Class Notice also provides that any Class Member may choose to
28 opt out of the Class, and that any such person who chooses to opt out of the Class will

1 not be entitled to any recovery obtained by way of the settlement and will not be bound
2 by the settlement. The Class Notice further advises Aggrieved Employees that they may
3 not exclude themselves from the PAGA (or non-class) portion of the settlement, as that
4 claim is filed on behalf of the LWDA. The Class Notice explains that all objections to
5 the Settlement by members of the Class must be submitted no later than forty-five (45)
6 days from the mailing of the Notice. All objections must state with particularity the basis
7 on which they are asserted. In accordance with *Mercury Interactive Corp. Secs. Litig.*
8 *v. Mercury Interactive Corp.*, 618 F.3d 988 (9th Cir 2010), the application for attorneys'
9 fees and costs will be filed before the end of the objection period and posted on a website
10 as indicated in the Class Notice. Thus, all Class Members and Aggrieved Employees
11 will have ample opportunity to review and comment on the attorneys' fees before the
12 objection deadline and the motion for attorneys' fees will be heard at the Final Approval
13 Hearing. The motion for attorneys' fees and costs will be heard in conjunction with the
14 motion for final approval on the Final Approval Hearing date.

15 33. The Class Notice also informs Class Members about the release applicable
16 to the Class and Aggrieved Employees about the release applicable to them. This notice
17 program was designed to meaningfully reach the largest possible number of potential
18 Class Members and Aggrieved Employees. The notice program also provides for the use
19 of emails and electronic media to locate Class Members and Aggrieved Employees. The
20 mailing and distribution of the Class Notice satisfies the requirements of due process,
21 and is the best notice practicable under the circumstances and constitutes due and
22 sufficient notice to all persons entitled thereto.

23 24 Service Award

25 34. The payment of service awards to successful class representatives is
26 appropriate and the amount of \$10,000 is well within the currently accepted range. The
27 requested award is also reasonable by reference to the amounts that other California
28 courts have found to be reasonable in wage and hour class action settlements: *Baker v.*

1 *L.A. Fitness Int'l, LLC*, Case No. BC438654, L.A. County Superior Court (Dec. 12,
2 2012)(awarding \$10,000 service awards to three named plaintiffs); *Blue v. Coldwell*
3 *banker Residential Brokerage Co.*, Case No. BC417335, Los Angeles County Superior
4 Court (Mar. 21, 2011)(awarding \$10,000 service award); *Buckmire v. Jo-Ann Stores,*
5 *Inc.*, Case No. BC394795, Los Angeles County Superior Court (June, 11,
6 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case
7 No. BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000
8 service award); *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los
9 Angeles County Superior Court (May 27, 2011)(awarding \$10,000 service award);
10 *Hickson v. South Coast Auto Ins. Marketing, Inc.*, Case No. BC390395, Los Angeles
11 County Superior Court (Mar. 27, 2012)(awarding \$10,000 service award); *Hill v.*
12 *sunglass Hut Int'l, Inc.*, Case No. BC422934, Los Angeles County Superior Court (July
13 2, 2012)(awarding \$10,000 service award); *Kambamba v. Victoria's Secret Stores, LLC*,
14 Case No. BC368528, Los Angeles County Superior Court, (Aug. 19, 2011)(awarding
15 \$10,000 service award together with additional compensation for their general release);
16 *Magee v. American Residential Services, LLC*, Case No. BC423798, Los Angeles
17 County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award); *Mares v. BFS*
18 *Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
19 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Nevarez v. Trader*
20 *Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court (Jan. 29,
21 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No.
22 BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000
23 service award); *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los
24 Angeles County Superior Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva*
25 *v. Catholic Mortuary Services, Inc.*, Case No. BC408054, Los Angeles County Superior
26 Court (Feb. 8, 2011)(awarding \$10,000 enhancement award); *Weisbarth v. Banc West*
27 *Investment Services, Inc.*, Case No. BC422202, Los Angeles County Superior Court
28 (May 24, 2013)(awarding \$10,000 service award); *Zamora v. Balboa Life & Casualty,*

1 *LLC*, Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding
2 \$25,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-
3 273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service
4 award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior
5 Court (Sept. 13, 2011)(awarding \$10,000 service award); *Aguiar v. Cingular Wireless,*
6 *LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17, 2011)(awarding \$14,767
7 service award); *Bejarano v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL
8 (Opx)(C.D. Cal. June 22, 2010)(awarding \$10,000 service award); *Carbajal v. Sally*
9 *Beauty Supply LLC*, Case No. CIVVS 1004307, San Bernadino County Superior Court
10 (Aug. 6, 2012)(awarding \$10,000 service award); *Contreras v. Serco Inc.*, Case No.
11 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding \$10,000 service award);
12 *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside County
13 Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT*
14 *Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10,
15 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*,
16 Case No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000
17 service award); *Barrett v. Doyon Security Services, LLC*, Case No. BS900199,
18 BS900517, San Bernardino County Superior Court (Apr. 23, 2010)(awarding \$10,000
19 service award).

20 I declare under penalty of perjury under the laws of the State of California and the
21 United States that the foregoing is true and correct. Executed this 30th day of
22 September, 2021, at La Jolla, California.

23
24 By: /s/ Kyle R. Nordrehaug

25 KYLE R. NORDREHAUG
26
27
28

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff David Ettedgui (“Plaintiff”) and Defendant WB Studio Enterprises Inc. (“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 the Class Action Complaint pending in the United States District Court in and for the Central District of California, and any amendments thereto, which is captioned *Ettedgui v. WB Studio Enterprises, Inc.* Case No. 2:20-cv-08053-MCS-JDE, as amended pursuant to the terms of this agreement, and was originally filed in the Superior Court of the State of California, County of Los Angeles Case No. 20STCV24867.
- B. “Aggrieved Employees” means all individuals who worked for Defendant in California as non-exempt employees who were Tour Guides/Floaters at any time during the PAGA Period.
- C. “Class” means all individuals who worked for Defendant in California as non-exempt employees who were Tour Guides/Floaters as 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 and State Court PAGA Action, including their pre-filing investigation, their filing of the Action and State Court PAGA Action, all related litigation activities, all Settlement work, and related litigation expenses billed in connection with the Action and the State Court PAGA Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her email address (if known); and his or her weeks worked during the Class Period as a Class Member and weeks 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 substantially 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 29, 2016 through May 27, 2021.
- K. “Class Representative” means and refers to David Ettedgui.
- L. “Class Representative Service Payment” means the service payment made to Plaintiff in his capacity as Class Representative in order to compensate him for initiating the Action and the State Court PAGA Action, performing work in support of the Action and the State Court PAGA Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action and the State Court PAGA Action, and for the general release of all claims by the Plaintiff.
- M. “Court” means the United States District Court in and for the Central District of California.
- N. “Defendant” means WB Studio Enterprises Inc.
- O. “Defendant’s Counsel” means Seth E. Pierce and Louise Truong of Mitchell Silberberg & Knupp LLP.
- P. “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(R) of this Agreement.
- Q. “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.
- R. “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 day after the last date on which a notice of appeal from the Judgment may be filed.
 - 3. If Judgment is entered and an appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- S. “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.

- T. “Gross Settlement Amount” means Seven Hundred Twenty Thousand Dollars (\$720,000) 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 Payment, 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 be the separate additional obligation of Defendant. The Gross Settlement Amount shall be paid without the need to submit a claim form.
- U. “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.
- V. “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.
- W. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- X. “PAGA Period” means the period of time from February 17, 2019 through May 27, 2021.
- Y. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- Z. “Person” means and refers to any individual, proprietorship, corporation, personal loan-out corporation, partnership, association, trustee, unincorporated association, or any other type of legal entity, except a governmental entity.
- AA. “Plaintiff” means and refers to David Ettedgui.
- BB. “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.
- CC. “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 and assigns of Defendant.
- DD. “Settlement” means the disposition of the Action, the State Court PAGA Action and all related claims effectuated by this Agreement.

- EE. “Settlement Administrator” means the third party settlement administrator proposed by the Parties, as approved by the Court.
- FF. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.
- GG. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the dissemination of any Class Notice, as a means for Persons in the Class to obtain notice of and information about the settlement, through and including hyperlinked access to this Settlement Agreement, the Class Notice, the Preliminary Approval Order and such other documents as Class Counsel and Defendant’s Counsel agree to post or that the Court orders posted on the Settlement Website. These documents shall remain on the Settlement Website at least until the Effective Date. The URL of the Settlement Website shall be mutually agreed upon by Class Counsel and Defendant’s Counsel. The Settlement Website shall not include any advertising, and shall not bear or include the Defendant’s logos or trademarks. Ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days of the date on which operation of the Settlement Website ceases.

II. RECITALS

- A. On February 17, 2020, Plaintiff sent a correspondence to the Labor and Workforce Development Agency (“LWDA”) and Defendant outlining various alleged violations of the California Labor Code under Private Attorneys General Act, Cal. Labor Code §§ 2698 *et seq.* (“PAGA”).
- B. On June 29, 2020, Plaintiff filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Los Angeles. Plaintiff asserted claims that Defendant allegedly:
 - 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;
 8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203;
 9. Wrongfully terminated Plaintiff in violation of public policy and California Labor Code § 1102.5; and
 10. Retaliated against Plaintiff in violation of public policy and California Labor Code § 1102.5.
- C. On September 2, 2020 Defendant removed the Class Action to the United States District Court, Central District of California.
- D. On September 30, 2020, Defendant filed a Motion to Dismiss Plaintiff's Class Action Complaint.
- E. On October 26, 2020, the United States District Court, Central District of California granted Defendant's Motion to Dismiss Plaintiff's Class Action Complaint, with leave for Plaintiff to amend the Class Action Complaint.
- F. On November 09, 2020, Plaintiff filed a First Amended Complaint against Defendant in the United States District Court, Central District of California. Plaintiff re-asserted claims that Defendant allegedly:
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;
 8. Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203;

9. Wrongfully terminated Plaintiff in violation of public policy and California Labor Code § 1102.5; and
 10. Retaliated against Plaintiff in violation of public policy and California Labor Code § 1102.5.
- G. On November 23, 2020, Defendant filed a Motion to Dismiss Plaintiff's First Amended Complaint.
- H. On December 28, 2020, the United States District Court, Central District of California granted in part and denied in part Defendant's Motion to Dismiss Plaintiff's First Amended Complaint without leave to amend, and thereby, the Action only had five remaining causes of action at issue:
1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 1194, 1197 & 1197.1;
 2. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
 3. Failure to Provide Required Rest Periods in Violation of Cal. Labor Code §§ 226.7 & 512 and the Applicable IWC Wage Order;
 4. Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; and
 5. Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203
- I. On January 11, 2021, Defendant filed its Answer, with eighteen (18) affirmative defenses to the Class Action Complaint.
- J. On October 19, 2020, Plaintiff filed a separate Representative Action Complaint against Defendant in the Superior Court of the State of California, County of Los Angeles, Case No. 20BBCV00719. Plaintiff asserted claims that Defendant: violated the Private Attorney General Act, California Labor Code §§ 2698, *et seq.* ("State Court PAGA Action") based on the same conduct alleged in the Complaint, including claims under PAGA predicated on allegedly unreimbursed business expenses.
- K. On December 17, 2020, Defendant removed the State Court PAGA Action to the United States District Court, Central District of California.
- L. On January 15, 2021, Plaintiff filed a Motion to Remand the State Court PAGA Action to State Court.
- M. On February 18, 2021, the United States District Court, Central District of California granted Plaintiff's Motion to Remand the State Court PAGA Action to State Court. Defendant filed a Demurrer and Motion to Strike, which remains pending.

- N. On April 28, 2021, the Parties participated in an all-day mediation presided over by Jeffrey Krivis, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, agreed to settle the Action and the State Court PAGA 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.
- O. The Class Representative believes that the Released Class Claims and Released PAGA Claims have merit and that the evidence developed to date supports his claims. However, the Class Representative and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, appeals, and ancillary actions. The Class Representative and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties, complexities, and delays inherent in such litigation. The Class Representative and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Class and Aggrieved Employees. Based upon their evaluation, the Class Representative and Class Counsel have determined that the Settlement set forth in this Agreement is in the best interest of the Class and Aggrieve Employees and is fair, adequate, and reasonable.
- P. Defendant has denied and continues to deny all liability with respect to any and all of the Released Class Claims and Released PAGA Claims or the facts alleged in support thereof and has denied and continues to deny all charges of wrongdoing or liability against it arising out of or relating to any conduct, acts, or omissions alleged or that could have been alleged in the Action or the State Court PAGA Action. Defendant's willingness to resolve the Released Class Claims and Released PAGA Claims on the terms and conditions embodied in this Agreement is based on, among other things: (i) the time and expense associated with litigating the Released Class Claims and Released PAGA Claims through trials and any appeals; (ii) the benefits of resolving the Released Class Claims and Released PAGA Claims, including limiting further expense, inconvenience and distraction, disposing of burdensome and protracted litigation, and permitting Defendant to conduct its business unhampered by the distractions of continued litigation; and (iii) the uncertainty and risks inherent in any litigation.
- Q. The Parties to this Agreement recognize that the claims against Defendant are strongly disputed, and the Parties wish to resolve completely and totally all Released Class Claims and Released PAGA Claims against Defendant and the other Released Parties

NOW THEREFORE, subject to Court approval, as hereinafter provided, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement, and upon the entry by the Court of a final order approving the Settlement and directing the implementation of the terms and conditions of the Settlement as set forth in this

Agreement, this Action and the State Court PAGA Action shall be settled and compromised upon the terms and conditions contained herein.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Amended Complaint.** The Parties will stipulate to the filing of an agreed upon amended complaint, after review/comment by Defendant, which adds the PAGA claims as set forth in the State Court PAGA Action to the Action, and dismiss the State Court PAGA Action without prejudice.
- B. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Seven Hundred Twenty Thousand Dollars (\$720,000.00). 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 (if any) 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. No Released Party shall be required to pay anything above or beyond the Gross Settlement Amount, under any circumstance, as a result of this Agreement, except any increase in the Gross Settlement Amount by operation of the Class Size Modification provision in section III.D.5 below.
- C. **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 Plaintiff:** In addition to the Settlement Share 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 a Class Representative Service Payment of no more than \$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 for Plaintiff, it shall not terminate this Agreement, otherwise affect the Court's ruling on the Motion for Final Approval, or extend the deadline for any appeal with respect to any order on the Motion for Final Approval, and the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Plaintiff agrees that the incentive payment is not a wage payment. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued by the Settlement Administrator to Plaintiff with respect to the payment who will assume full responsibility and liability for the taxes due on his Class Representative Service Payment.
 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 \$240,000, 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 amounts so awarded shall be for and in complete satisfaction of all attorneys' fees, costs, and expenses incurred to date by the Class Representative, Class Counsel on behalf of the Class Representative and the Class, and of all such future fees, costs, and expenses, including fees, costs, and expenses incurred in documenting this Settlement, securing Court approval of this Settlement, monitoring this Settlement, reviewing and participating in the claims and distribution administration process, and obtaining the Final Approval Order and Judgment. 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 \$240,000, and \$20,000 respectively, it shall not terminate this Agreement, otherwise affect the Court's ruling on the Motion for Final Approval, or extend the deadline for any appeal with respect to any order on the Motion for Final Approval and 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 by the Settlement Administrator to Class Counsel with respect to those payments. Not later than the Effective Date, Class Counsel shall provide a fully and properly executed IRS Form W-9 for purposes of the payments which the Settlement Administrator will make to Class Counsel. 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 \$20,000 out of the Gross Settlement Amount, of which 75% (\$15,000) shall be allocated to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to PAGA and 25% (\$5,000) 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 \$20,000, it shall not terminate this Agreement, otherwise affect the Court's ruling on the Motion for Final Approval, or extend the deadline for any appeal with respect to any order on the Motion for Final Approval and the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. If the Court approves a PAGA Payment of more than \$20,000, it shall not terminate this Agreement, otherwise affect the Court's ruling on the Motion for Final Approval, or extend the deadline for any appeal with respect to any order on the Motion for Final Approval, and the excess amount will be taken

from the Net Settlement Amount for distribution of Participating Class Members. All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to the release of their 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 shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. This payment shall constitute full satisfaction of the obligation, if any, to pay civil penalties to the LWDA pursuant to California Labor Code Section 2699(i) as to the Released PAGA Claims.

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 \$20,000 (“Settlement Administration Expenses”). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$20,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

D. **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 Settlement Administrator with the Class Data; (ii) the Settlement Administrator shall then divide the Net Settlement Amount by the total number of workweeks worked by the Participating Class Members during the Class Period 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 hundred percent (100%) of each Participating Class Member’s Settlement Share is in settlement of claims for interest and claims for penalties allegedly due to employees. One hundred percent (100%) of each Participating Class Member’s Settlement Share shall not be

subject to wage withholdings, and shall be reported on IRS Form 1099.

- b. 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 (though they shall receive a share of the PAGA Payment, if an Aggrieved Employee), 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 class consists of an estimated total of 632 Class Members who worked no more than 32,000 workweeks between June 29, 2016 and March 13, 2020. In regard hereto, Defendant will provide a declaration under penalty of perjury prior to the filing of the motion for preliminary approval as to the number of Class Members during the Class Period. The Gross Settlement Amount will increase proportionally with added Class Members if the actual number of Class Members in the Class Period is more than 10% in excess of the estimate stated herein.
- E. **Appointment of Settlement Administrator.** After obtaining quotes from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Simpluris_ 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 shall have the sole authority to administer the Gross Settlement Amount, and to disburse sums from the Gross Settlement Amount.
 1. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; establishing and maintaining the Settlement Website until ownership is transferred to the Defendant, 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 and the Aggrieved Employees' share of their PAGA Payment; 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 an Aggrieved Employee's share of his or her PAGA Payment and 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.

2. The Settlement Administrator shall carry out its duties in strict accordance with the procedures set forth in this Agreement, and any Party may move the Court to compel such compliance. With or without good cause, the Parties may jointly move the Court to replace the Settlement Administrator. With good cause, any Party may, of its own accord, move the Court to replace the Settlement Administrator. The Court may on its own motion replace the Settlement Administrator at any time with or without cause. Except for the specific funding obligations set forth in Section III.B, the Parties shall have no responsibility to members of the Class for the administration of claims or the distribution of the cash benefits under this Agreement
3. 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.

F. 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 a Proposed Order Granting Preliminary Approval of the Settlement

substantially in the form attached as 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), Defendant reserves the right to terminate the Agreement. However, Defendant agrees to work with Plaintiff in good faith to address any concerns raised by the Court and determine if it is possible to propose a revised Settlement for the Court's approval before terminating the Agreement pursuant to Section III.F.3.9.
 - d. Within ten (10) days of the filing the Motion for Preliminary Approval, the Settlement Administrator will, pursuant to CAFA, mail the notice(s) of the Settlement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1711 *et seq.* Defendant shall provide the Settlement Administrator with the information necessary for the mailing of the notice(s) under CAFA.
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 an estimate of the Class Member's Settlement Share) as follows:
- a. No later than fifteen (15) days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's 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, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in Section III.F.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 and shall not be used for any other purpose by Class Counsel. This provision shall not be construed to impede Class Counsel's ability to discharge their fiduciary duties to the Class, and if additional disclosures are necessary, Class Counsel will obtain written authorization of Defendant and/or an order from the Court.
 - 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, Federal Rule of Civil Procedure 23(c)(2), 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 (as to the recipient of the remailed notice only) 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. The Settlement Administrator shall keep records of all notices issued. Promptly upon request, the Settlement Administrator shall provide a sworn proof of mailing. Upon request, the Settlement Administrator shall provide records to Defendant in an electronic format designated by Defendant. The Settlement Administrator shall maintain all records for a period of not less than four (4) years following the expiration of the Effective Date.

- f. 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. **Settlement Website.** Prior to issuance of the Class Notice, the Settlement Administrator will establish and maintain the Settlement Website. The Settlement Website shall include a list of upcoming important dates and deadlines, the Class Notice, a printable or downloadable version of the Election Not to Participate in Settlement form, the operative Complaint, the Settlement Agreement including all Exhibits, all motions filed in support of preliminary and final approval, including the application for an award of attorneys' fees, costs, and the Class Representative Service Payment, and all other content jointly approved by the Parties.
4. **Objections to Settlement; Disputes as to Workweeks 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. Objections must comply with Federal Rule of Civil Procedure 23(E)(5). 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 (for the recipient of the re-mailing) 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 Workweeks.** 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 number of workweeks 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 (for the recipient of the re-mailing) 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, not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets, either (i) submit a signed Election Not to Participate in Settlement online through the Settlement Website or (ii) mail a signed Election Not to Participate in Settlement to the Settlement Administrator. Any online submission of the Election Not to Participate in Settlement must be confirmed with a confirmation number before the deadline. Any Election Not to Participate in Settlement that is submitted via mail, must be postmarked by the deadline. If a Class Notice Packet is re-mailed, the response date for opt-outs will be extended (for the recipient of the re-mailing) 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 provide 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.

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 deemed to have forever waived their right to opt out of the Class and will be irrevocably bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims and the Released PAGA Claims set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
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. **Withdrawal of Election Not to Participate in Settlement.** Prior to the entry of the Final Approval Order and Judgment, any Person who has elected to opt out of the Settlement may withdraw that election by notifying the Settlement Administrator in writing that he or she wishes to be a Participating Class Member. The Settlement Administrator shall maintain records of all withdrawn opt outs, and shall provide such information to Class Counsel and Defendant's Counsel.
7. **Additional Briefing**
 - 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 Payment 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, 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.

8. **Final Approval of Settlement**

- a. 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.

9. **Settlement Termination**

- a. **Termination if Court Approval Is Not Obtained.** This Agreement is expressly conditioned upon: (i) Court approval of this Agreement; (ii) entry of the Preliminary Approval Order in a mutually-agreeable form; and (iii) entry of the Final Approval Order in a mutually-agreeable form. If the Court declines to enter either of these Orders, or modifies (in what Defendant reasonably determines to be a material way) any aspect of this Agreement or of such Orders, Defendant shall have the independent right to terminate this Agreement. For purposes of this Section III.F.9., a "material" modification shall include, but is not limited to, any modification in the releases to be provided, or any modification that would increase the Settlement Amount. 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 Payment, 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.
- b. **Termination if Opt Out Limit Is Exceeded.** If the number of workweeks worked by Class Members who timely submit valid Elections Not to Participate in Settlement exceeds ten percent (10%) of the total number of workweeks worked by the Class as a whole, Defendant, at its sole discretion, shall have the right to terminate this Agreement.
- c. **Termination if 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, Defendant shall have the right to terminate the Agreement. However, Defendant agrees to work with Plaintiff in good faith to address any concerns raised by the reviewing Court to determine if it is possible to propose a revised Settlement for the Court's approval before terminating the Agreement.

- d. **Termination Procedure and Effect.** If Defendant elects to terminate this Agreement pursuant to Section III.F.9.a, b., or c., Defendant may do so by giving written notice to Class Counsel. Notice of termination must be given within thirty (30) days of the act or order or report from the Settlement Administrator giving rise to the right to terminate, unless extended by the mutual agreement of the parties. If Defendant terminates this Agreement, the termination shall void all of the rights, obligations, and releases under this Agreement, except for those provisions that are necessary to effectuate the termination. Within fifteen (15) calendar days after notice of termination, the Settlement Administrator shall return all settlement payments made by Defendant prior to such termination (inclusive of interest and exclusive of notice and administration costs already expended).
10. **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.
11. **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. If no objection to Settlement is made, Defendant shall fund the Gross Settlement Amount within thirty (30) days of the later 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 and the orders of the Court.

12. **Uncashed Settlement Share Checks.** A Participating Class Member or Aggrieved Employee must cash his or her check for their Settlement Share check or for their PAGA allocation within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected individual at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Settlement Administrator will also send the individual 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 and for the benefit of the individual who did not cash their check, and the Participating Class Member or Aggrieved Employee will 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 or Aggrieved Employees, whether or not they all cash their checks for their Settlement Share or share of the PAGA Payment..
13. **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.

G. Release of Claims.

1. **Participating Class Members.** As of the Effective Date and upon full funding, the Participating Class Members shall and do release the Released Parties of any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, which any Participating Class Member now has or at any time ever had against any of the Released Parties that is alleged in the operative Complaint or that could have been alleged based on the facts alleged in the operative Complaint, including: (a) meal period penalties allegedly owed to the

Participating Class Members by Defendant during the Class Period; (b) rest period penalties allegedly owed to the Participating Class Members by Defendant during the Class Period; (c) violation or alleged violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order or other statute or regulation regarding meal and rest periods; (d) attorneys' fees due or allegedly due under California Labor Code or any other statute, regulation, or contractual provision providing for such fees in connection with the operative Complaint; and (e) penalties or other payments which are based on any of the foregoing, including penalties, premiums, or payments under California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any violation of the California Industrial Commission Wage Order alleged in the operative Complaint ("Released Class Claims"). Without in any way limiting the foregoing, the Released Class Claims shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under statutes and regulations set forth in this Section G.1., whether enforced directly or pursuant to California Labor Code Section 2699, California Business and Professions Code Section 17200, *et seq.*, or any other mechanism. The Released Class Claims do not include claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period.

2. **Aggrieved Employees.** As of the Effective Date and upon full funding, the State of California and the Aggrieved Employees shall and do release the Released Parties of all PAGA claims for civil penalties pled in the operative Complaint or in the Class Representative's letter to the LWDA, dated February 17, 2020, which arose during the PAGA Period or could have been alleged based on the factual allegations contained in the operative Complaint or the letters sent by Plaintiff that occurred during the PAGA Period as to the Aggrieved Employees, including: (a) PAGA claims predicated on meal period penalties allegedly owed to the Aggrieved Employees by Defendant during the PAGA Period; (b) PAGA claims predicated on rest period penalties allegedly owed to the Aggrieved Employees by Defendant during the PAGA Period; (c) PAGA claims predicated on violation or alleged violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order or other statute or regulation regarding meal and rest periods; (d) attorneys' fees due or allegedly due under PAGA in connection with the operative Complaint; and (e) PAGA penalties which are based on any of the foregoing, including PAGA penalties predicated on penalties, premiums, or payments allegedly due under California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order. ("Released PAGA Claims"). The Released PAGA Claims exclude any PAGA claims outside the PAGA Period. 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 and upon full funding, Plaintiff generally releases and discharges the Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period, inclusive of the Released Class Claims, the Released PAGA Claims, and the claims arising from his prior employment with Defendant and separation of said employment with Defendant. (“Plaintiff’s Released Claims”). 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.

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 they now know or believe to be true with respect to the subject matter of the Plaintiff’s Released Claims, those claims will remain released and forever barred. 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. Therefore, with respect to Plaintiff’s Released Claims, Plaintiff expressly waives and relinquish 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 or the State Court PAGA Action.

- H. **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.

- I. **Limitation on Public Statements About Settlement.** Neither Class Counsel nor Defendant's Counsel shall publicize the Settlement prior to the Court granting preliminary approval, other than filing documents with the Court. Plaintiff and Class Counsel and Defendant and Defendant's Counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the Settlement. If Plaintiff or Class Counsel or Defendant or Defendant's Counsel receives an inquiry about the Settlement from the media, they may respond only after the Motion for Preliminary Approval has been filed and only by confirming the accurate terms of the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval. Nothing in this provision shall prevent Defendant or Plaintiff from making any required disclosures.

J. **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 the State Court PAGA 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 and the State Court PAGA 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 or the Released Parties of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant and the Released Parties specifically disclaim 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 the State Court PAGA 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 or Defendant 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.J.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 the State Court PAGA Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Beneficiaries.** This Agreement shall be binding upon the Parties and each of them, and each of their respective heirs, successors, and assignees, and shall inure to the benefit of the Parties, as well as to each of the Released Parties, each of whom shall be deemed a third party beneficiary of this Agreement.
12. **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.

13. **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.
14. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

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

To Defendant:

Mitchell Silberberg & Knupp LLP
Seth E. Pierce
Louise Truong
2049 Century Park East, 18th Floor
Los Angeles, CA 90067-3120
Telephone: (310) 312-2000
Facsimile: (310) 312-3100
Email: sep@msk.com
ltt@msk.com

15. **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.
16. **Continuing Jurisdiction.** After entry of Judgment, the Court or Magistrate Judge shall retain continuing jurisdiction over the Action and Settlement under Federal Rules of Civil Procedure section 41(a) 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. The Parties agree

to submit a Stipulation and Proposed Order requesting the Court to retain jurisdiction to enforce this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

AGREED TO AND ACCEPTED.

Dated: Sep 14, 2021

David Adam Ettegui
David Adam Ettegui (Sep 14, 2021 18:57 PDT)

Plaintiff David Ettegui

Dated: _____

Dan Dark, Executive Vice President
For Defendant WB Studio Enterprises, Inc.

APPROVED AS TO FORM.

Dated: 9/15/21



Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: _____

Seth E. Pierce
Mitchell Silberberg & Knupp LLP

to submit a Stipulation and Proposed Order requesting the Court to retain jurisdiction to enforce this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

AGREED TO AND ACCEPTED.

Dated: _____

Plaintiff David Ettedgui

Dated: 9/15/2021

Dan Dark

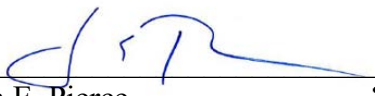
Dan Dark, Executive Vice President
For Defendant WB Studio Enterprises, Inc.

APPROVED AS TO FORM.

Dated: _____

Norman Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: 09/15/2021



Seth E. Pierce
Mitchell Silberberg & Knupp LLP

EXHIBIT A

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

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

(Ettedgui v. WB Studio Enterprises Inc., Case No. 2:20-cv-08053-MCS-JDE)

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

To: All individuals who worked for WB Studio Enterprises Inc. in California as Tour Guides/Floaters at any time during the period June 29, 2016 through May 27, 2021 (“Class Members”). (Those individuals who worked during the period February 17, 2019 through May 27, 2021 are referred to as Aggrieved Employees and are entitled to an additional payment, as detailed below.)

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the settlement, you do not have to do anything. If the settlement is finally approved by the Court, the payment will be mailed to you at the same address as this Notice. If your address has changed or changes before you receive payment, please notify the Settlement Administrator, as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	To exclude yourself from the class settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will retain your right to sue the Defendant as to the claims released by the class settlement. If you request exclusion, you will receive no money from the class settlement. Instructions are set forth below. You may not exclude yourself from the PAGA (or non-class) portion of this settlement, as that claim is filed on behalf of the LWDA (a state agency). If the Court finally approves the settlement, all Aggrieved Employees will receive the PAGA payment and release the Released PAGA claims, regardless of whether you submit a request for exclusion from the class settlement.
Object/Comment	You may write to the Court about why you like or do not like the settlement or you may appear at the Final Approval Hearing to make an oral statement in support of or in opposition to the settlement. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the United States District Court for the Central District of California (the “Court”), and a related proceeding pending in California state court, has been reached between Plaintiff David Ettedgui (“Plaintiff”) and Defendant WB Studio Enterprises Inc. (“Defendant”) and has been granted preliminary approval by the Court. **You may be entitled to receive money from this Settlement. The Court has not made a determination about any of the contentions of the parties. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims or defenses asserted by either side.**

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

All individuals who worked for Defendant in California as non-exempt employees who were Tour Guides/Floaters as at any time during the Class Period. The Class Period is June 29, 2016 through May 27, 2021.

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

2. What is this class action lawsuit about?

On June 29, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Los Angeles (Case No. 20STCV24867). Plaintiff asserted claims against Defendant for wage and hour violations under the California Labor Code based primarily on allegations that Defendant denied full meal/rest periods and failed to reimburse certain business expenses incurred by employees. On September 2, 2020, Defendant removed the matter to federal court, the United States District Court, Central District of California, where it is currently pending as *Ettegui v. WB Studio Enterprises Inc.*, Case No. 2:20-cv-08053-MCS-JDE (the “Action”).

On October 19, 2020, Plaintiff filed a separate lawsuit, also in state court (Case No. 20BBCV00719), based on the same conduct alleged in the federal Action, but filed pursuant to the Private Attorneys General Act (“PAGA”). This claim is brought on behalf of a subset of the class, specifically, those Tour Guides/Floaters who worked during the shorter statute of limitations applicable to such PAGA claims. As part of this Settlement, Plaintiff has filed an amended complaint in federal court asserting the PAGA claim in the federal Action, so that the Settlement can resolve all related claims together.

Through mediation on April 28, 2021, the Parties reached a settlement in order to avoid the inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented.

Defendant disputes all claims asserted in this litigation, and further denies that the Action is appropriate for class or PAGA treatment for any purpose other than this Settlement. Specifically, Defendant maintains that it has properly complied with all state and federal laws and regulations, including the California Labor Code and California Industrial Commission Wage Order. Nothing in this Notice, the Settlement, or actions to carry out the Settlement means that the Defendant admits any fault, wrongdoing or liability whatsoever. The Court has not made any findings regarding Plaintiff’s claims.

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 Seven Hundred Twenty Thousand Dollars (\$720,000.00) (the “Gross Settlement Amount”) to fully resolve the claims in the Action. The Gross Settlement Amount includes all payments of Settlement Shares to the Class contemplated by the Settlement, the PAGA Payment, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, and the Class Representative Service Payment to the Plaintiff. If the Court finally approves the Settlement, the entirety of the Gross Settlement Amount will be disbursed. With the exception of Defendant’s right to terminate the Settlement

Agreement under certain conditions (as detailed further in the Settlement Agreement), no amount of the Gross Settlement Amount will revert to Defendant for any reason.

Amounts to be Paid From the Gross Settlement Amount. The Court has tentatively approved certain payments to be made from the Gross Settlement Amount as described, below. These amounts are subject to final Court approval, and will be deducted from the Gross Settlement Amount before settlement payments 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 \$20,000 for administering the Settlement.
- Attorneys’ Fees and Costs. Payment to Class Counsel of reasonable attorneys’ fees not to exceed one-third of the Gross Settlement Amount, which is \$240,000, as the “Class Counsel Fees Payment”, and an additional amount to reimburse actual litigation expenses not to exceed \$20,000 as the “Class Counsel Litigation Expenses Payment.” 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 to date) and has been paying all litigation costs and expenses.
- Class Representative Service Payment. A Class Representative Service Payment that will not exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate Plaintiff for his services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$20,000 relating to the claim for penalties under PAGA, \$15,000 of which will be paid to the LWDA (a California government agency). The remaining \$5,000 will be distributed to the Aggrieved Employees to be allocated based on the number of workweeks worked as an Aggrieved Employee during the PAGA Period. Aggrieved Employees are all individuals who worked for Defendant in California as non-exempt employees who were Tour Guides/Floaters at any time during the PAGA Period. The PAGA Period is February 17, 2019 through May 27, 2021.

Calculation of Payments to Participating Class Members. After all of the payments of the court-approved Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the amount remaining is the Net Settlement Amount. The Net Settlement Amount shall be distributed to Participating Class Members. The submission of a claim form is not required to be paid. The Net Settlement Amount shall be paid as described below.

The amount paid to each Participating Class Member (his/her “Settlement Share”) will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period (“Weekly Rate”), and (b) multiplying the Weekly Rate by the number of weeks worked by each individual Participating Class Member during the Class Period. The Class consists of an estimated total of **632 Class Members who collectively worked 32,000 workweeks** during the Class Period.

If the Settlement is approved by the Court and you do not opt out, you will automatically be mailed a check for your Settlement Share to the same address as this Notice. You do not have to do anything to receive a payment. If your address has changed or changes before the payment is issued, you must contact the Settlement Administrator to inform it of your correct address to insure you receive your payment.

Tax Matters. One Hundred percent (100%) of each Participating Class Member’s Settlement Share is in settlement of claims for interest and for penalties allegedly due to employees, neither of which will be subject to wage withholdings. An IRS Form 1099 will be issued, if applicable.

Participating Class Members shall be responsible for paying any taxes owing on their Settlement Shares. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You 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.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the date that the final judgment in the Action becomes final and upon full funding by the Defendant of the Gross Settlement Amount, the Participating Class Members shall fully and finally release and discharge Defendant, together with all 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 and assigns of Defendant ("Released Parties"), from all Released Class Claims. "Released Class Claims" are any and all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action, of every kind and/or nature whatsoever, which any Participating Class Member now has or at any time ever had against any of the Released Parties that is alleged in the operative Complaint or that could have been alleged based on the facts alleged in the operative Complaint, including: (a) meal period penalties allegedly owed to the Participating Class Members by Defendant during the Class Period; (b) rest period penalties allegedly owed to the Participating Class Members by Defendant during the Class Period; (c) violation or alleged violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order or other statute or regulation regarding meal and rest periods; (d) attorneys' fees due or allegedly due under California Labor Code or any other statute, regulation, or contractual provision providing for such fees in connection with the operative Complaint; and (e) penalties or other payments which are based on any of the foregoing, including penalties, premiums, or payments under California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any violation of the California Industrial Commission Wage Order alleged in the operative Complaint ("Released Class Claims"). Without in any way limiting the foregoing, the Released Class Claims shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under statutes and regulations set forth in this paragraph, whether enforced directly or pursuant to California Labor Code Section 2699, California Business and Professions Code Section 17200, *et seq.*, or any other mechanism. The Released Class Claims do not include claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant and/or any of the other Released Parties about the Released Class Claims 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.

Release of PAGA Claims: Separate and apart from the Released Class Claims specified above, all Aggrieved Employees will release all PAGA claims for civil penalties pled in the operative Complaint or in the Class Representative's letter to the LWDA, dated February 17, 2020, which arose during the PAGA Period or could have been alleged based on the factual allegations contained in the operative Complaint or letters sent by Plaintiff that occurred during the PAGA Period as to the Aggrieved Employees, including: (a) PAGA claims predicated on meal period penalties allegedly owed to the Aggrieved Employees by Defendant during the PAGA Period; (b) PAGA claims predicated on rest period penalties allegedly owed to the Aggrieved Employees by Defendant during the PAGA Period; (c) PAGA claims predicated on violation or alleged violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order or other statute or regulation regarding meal and rest periods; (d) attorneys'

fees due or allegedly due under PAGA in connection with the operative Complaint; and (e) PAGA penalties which are based on any of the foregoing, including PAGA penalties predicated on penalties, premiums, or payments allegedly due under California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial Commission Wage Order (“Released PAGA Claims”). The Released PAGA Claims exclude any PAGA claims outside the PAGA Period.

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. While you may not exclude yourself from the PAGA portion of the settlement (since it is brought on behalf of the LWDA), you may comment on or object to the PAGA portion of the Settlement if you believe it is unfair, even if you exclude yourself from the class portion of the Settlement.

5. How much will my payment be?

[Defendant’s records reflect that you worked<< _____>> weeks during the Class Period. Your estimated Settlement Share is << _____>>.]

The actual amount that you receive could be more or less than the above estimated amount, depending on the final settlement terms approved by the Court, including the number of persons who request exclusion.

You may dispute the number of workweeks assigned to you above. If you wish to dispute the accuracy of the number of workweeks set forth above, then you must submit a written, signed statement, setting forth the basis for the dispute, along with any supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____, [forty-five (45) calendar days after the 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 and your PAGA Payment if you are a member of the subgroup of Aggrieved Employees will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed or changes, you must notify the Settlement Administrator. The Settlement Administrator is: _____

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court finally approves the Settlement, and there are no objections or appeals, payments will be mailed within approximately two months after this hearing. If there are objections or appeals, resolving them can take time, perhaps 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 class 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 class settlement which means you will retain the right to sue Defendant for Released Class Claims.** You may not exclude yourself from the PAGA (or non-class) portion of this Settlement, as that claim is filed on behalf of the LWDA (a state agency). If the Court finally approves the Settlement, all Aggrieved Employees will receive the PAGA payment and release the Released PAGA claims, regardless of whether you submit a request for exclusion from the class settlement.

To opt out of the class settlement, you must submit a written, signed request to opt-out either (i) online through the Settlement Website; or (ii) by First Class Mail, postmarked (or in the case of online submission, submitted) no later than _____. The request to opt-out must state in substance: “I have read the Class

Notice, and I wish to opt-out of the class action and settlement of the case *Ettegui v. WB Studio Enterprises Inc.*, Case No. 2:20-cv-08053-MCS-JDE.” The request to opt-out must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. To be valid, the request to opt-out of the class settlement must be completed by you and must be timely submitted to the Settlement Administrator. No other person may opt-out for a living member of the Class. The Settlement Website is located at _____. Any online submission of the request to opt-out must be confirmed with a confirmation number before the deadline.

The address for the Settlement Administrator is _____. Written requests to opt-out of the class settlement that are postmarked or submitted online after _____, or are incomplete or unsigned, will be rejected. Class Members who submit untimely, incomplete, or unsigned requests to opt-out will remain bound by the Settlement, will receive their Settlement Share, and will be deemed to have released the Released Class Claims against Defendant.

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

Any Class Member who believes that the Settlement should not be finally approved by the Court for any reason may object to the proposed Settlement or to the motion for attorneys’ fees, costs and service award (which will be posted for viewing on or before _____[14 days before objection deadline] on the Settlement Website at _____. Written objections must state your name, current address, telephone number, and describe why and what part of the Settlement you believe to be unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Ettegui v. WB Studio Enterprises Inc.* in the United States District Court for the Central District of California, Case No. 2:20-cv-08053-MCS-JDE. Class Members may enter an appearance through an attorney if the Class Member so desires. (Note: You may not object to the class portion of the Settlement if you timely and validly opt out, as in that case, that part of the Settlement will not impact you.)

Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to make an oral objection.

Any written objections must be delivered or postmarked and mailed to the Settlement Administrator with copies to Class Counsel and Defendant’s Counsel by no later than _____. The address for the Settlement Administrator is _____.

The addresses for Parties’ counsel are as follows:

Class Counsel:

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

Counsel for Defendant:

Seth E. Pierce
Louise Truong
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, CA 90067-3120

To object to the class portion of 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, including being deemed to have released the Released Class Claims and the Released PAGA Claims. Any Class Member who does not object in the manner provided in this Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

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

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the United States District Court for the Central District of California, First Street Courthouse, 350 W. 1st Street, 7th Floor, Los Angeles, California 90012, in Courtroom 7C, before District Judge Mark C. Scarsi. 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 of 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.

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

You may call the Settlement Administrator at _____ or write to *Ettedgui v. WB Studio Enterprises Inc.* Settlement Administrator, c/o _____; or contact Class Counsel at 1-858-551-1223.

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You are able to review a copy of the Settlement Agreement, the motion for attorneys' fees, costs, and service award, the Final Judgment or other Settlement documents on the Settlement Website at _____. You may also get more details by examining the Court's file using PACER at <http://www.cand.uscourts.gov/> and entering the Case No. 2:20-cv-08053, or by going to the Clerk's Office located at 350 W. 1st Street, Los Angeles, California 90012 during regular business hours.

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. If the check of a Participating Class Member remains uncashed by the expiration date, the funds from such uncashed checks will be paid to the California State Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID ETTEDGUI, an individual,
on behalf of himself and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

WB STUDIO ENTERPRISES INC.,
a corporation; and DOES 1 through
50, inclusive,

Defendant.

CASE NO. **2:20-cv-08053-MCS-(JDEx)**

Assigned to: Hon. Mark C. Scarsi

[PROPOSED] ORDER:

- (1) GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT;**
- (2) APPROVING CLASS NOTICE;**
- (3) APPOINTING SETTLEMENT
ADMINISTRATOR; AND**
- (4) SCHEDULING FINAL
APPROVAL HEARING**

1 On _____, at _____ a.m., a hearing was held on the motion of
2 Plaintiff David Ettedgui (“Plaintiff”) for (1) preliminary approval of the parties’
3 proposed settlement (“Settlement”) with Defendant WB Studio Enterprises Inc.
4 (“Defendant”), (2) approval of the notice to be sent to the class about the
5 Settlement, and (3) the setting of a hearing date for final approval of the Settlement.

6 The Court having read and considered the papers on the motion, the
7 arguments of counsel, and the law, and good cause appearing therefore, **HEREBY**
8 **ORDERS THE FOLLOWING:**

9 1. The Court **GRANTS** Plaintiff’s Motion for Preliminary Approval of
10 the Settlement based upon the terms set forth in the Class Action Settlement
11 Agreement (the “Agreement”) (Declaration of Kyle Nordrehaug, Exh. ____) and this
12 Order incorporates the defined terms in the Agreement.

13 2. Pursuant to the terms of the Agreement, Plaintiff, Participating Class
14 Members, and Aggrieved Employees will take only that which is stated in the
15 Agreement as approved by the Court.

16 3. The Court hereby finds that pursuant to the Class Action Fairness Act,
17 28 U.S.C. § 1711 *et seq.* (“CAFA”), the Defendant caused the mailing of the CAFA
18 Notice to the Attorney General of the United States and the appropriate state
19 official in each state in which a Class Member reportedly resides at the time of
20 CAFA Notice according to Defendant’s records. Accordingly, the Court finds that
21 Defendant has discharged its obligations under CAFA to provide notice to the
22 appropriate federal and state officials.

23 4. Pursuant to the Agreement and for settlement purposes only, the Court
24 hereby preliminarily and conditionally certifies the Class and finds the
25 manageability of a representative action on behalf of the Aggrieved Employees, as
26 described in the Agreement, pursuant to the terms and conditions of the Agreement
27 and solely for the purposes set forth therein. Class is defined as all individuals who
28 worked for Defendant in California as non-exempt employees who were Tour

1 Guides/Floaters at any time during the Class Period. The Class Period is June 29,
2 2016 through May 27, 2021. For the reasons set forth in the motion, the Court
3 finds for settlement purposes only that this Class satisfies the requirements of Fed.
4 R. Civ. Proc. 23. Aggrieved Employees is defined as all individuals who worked
5 for Defendant in California as non-exempt employees who were Tour
6 Guides/Floaters at any time during the PAGA Period. The PAGA Period is
7 February 17, 2019 through May 27, 2021.

8 5. The Court hereby grants preliminary approval of the parties'
9 Agreement because the Settlement falls within the range of possible approval as
10 fair, adequate and reasonable, and appears to be the product of intensive, serious,
11 non-collusive arm's-length and informed negotiations and treats all Class Members
12 and Aggrieved Employees fairly. Continued litigation would have been expensive
13 for both sides. The parties acknowledge that litigating and trying this action may
14 have resulted in delay, involved significant risk as to liability and certification, and
15 led to possible appeals. Class Counsel received the relevant information for the
16 Class and Aggrieved Employees. Plaintiff has adequately demonstrated that the
17 agreement to settle did not occur until Class Counsel possessed sufficient
18 information to evaluate the case and make an informed decision about settlement.

19 6. The Court approves, as to form and content, the Notice of Pendency of
20 Class Action Settlement and Hearing Date for Final Court Approval, in the form
21 attached to the Agreement as Exhibit A ("Class Notice"). The Parties' proposed
22 notice plan is constitutionally sound because individual notices will be mailed to all
23 Class Members and Aggrieved Employees whose identities are known to the
24 parties, and such notice is the best notice practicable. The Parties' proposed Class
25 Notice sufficiently informs Class Members and Aggrieved Employees of the terms
26 of the Settlement, their rights under the Settlement, their rights to object to the
27 Settlement, their right to receive a Settlement Share or elect not to participate in the
28 Settlement, and the processes for doing so, and the date and location of the final

1 approval hearing, and therefore is approved.

2 7. The Court directs the distribution of the Class Notice in accordance
3 with the schedule and procedures set forth in the Agreement.

4 8. Defendant is directed to provide the Settlement Administrator with the
5 Class Data for each Class Member as specified by the Agreement no later than
6 fifteen (15) days after the date of entry of this order. Pursuant to the terms set forth
7 in the Agreement, the Class Data, its contents and any files containing Class Data
8 shall remain strictly confidential, not to be disclosed to Plaintiff or to Class Counsel
9 or to any Class Member or Aggrieved Employee.

10 9. Pursuant to the Agreement, any Class Member who does not submit a
11 valid request for exclusion will be deemed a Participating Class Member and will
12 be entitled to receive a Settlement Share based upon the allocation formula in the
13 Agreement.

14 10. The Court approves the procedures for Class Members to participate
15 in, opt out of, or object to the Settlement, as set forth in the Agreement and Class
16 Notice. Pursuant to the Agreement, any Class Member who wishes to comment on
17 or object to the Settlement, the attorneys' fees and costs, and/or the proposed Class
18 Representative Service Payment, or who elects not to participate in the Settlement,
19 has until 45 days after the mailing of the Class Notice to submit his or her
20 comment, objection, or request for exclusion pursuant to the procedures set forth in
21 the Class Notice.

22 11. Class Counsel must file their application for attorneys' fees and costs
23 no later than 14 days prior to the end of the objection period, and the application
24 will be heard at the Final Approval Hearing.

25 12. The Court appoints _____ to act as the Settlement
26 Administrator, pursuant to the terms set forth in the Agreement.

27 13. For settlement purposes only, the Court preliminary approves
28

1 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel and counsel
2 for the Aggrieved Employees subject to the Final Approval Hearing.

3 14. For settlement purposes only, the Court finds that Plaintiff is an
4 adequate representative of the Class and Aggrieved Employees and appoints him as
5 such.

6 15. A Final Approval Hearing will be held on _____, at
7 _____ in Courtroom 7C of the First Street Courthouse of the United States
8 District Court for the Central District of California, to determine whether the Court
9 should finally approve the Settlement as fair, reasonable, and adequate as to the
10 Class Members and Aggrieved Employees. The Court will hear all evidence and
11 argument necessary to evaluate the Settlement and will also consider the motion for
12 approval of attorneys' fees and costs and for approval of the Class Representative
13 Service Payment. Class Members and their counsel may support or oppose the
14 Settlement and the motion for an award of attorneys' fees and costs and the Class
15 Representative Service Payment, if they so desire, as set forth in the Class Notice.

16 16. Any Class Member/Aggrieved Employee may appear at the final
17 approval hearing in person or by his or her own attorney and show cause why the
18 Court should not approve the Settlement, or object to the motion for an award of
19 attorneys' fees and costs and the service award to Plaintiff. For any written
20 comments or objections to be considered at the hearing, the Class
21 Member/Aggrieved Employee must submit the written objections to the Settlement
22 Administrator in compliance with the instructions in the Class Notice and describe
23 the nature of the Class Member's comments, support or objection.

24 17. Counsel for the parties are hereby authorized to utilize all reasonable
25 procedures in connection with the administration of the Settlement which are not
26 materially inconsistent with either this Order or the terms of the Agreement.

27 18. If Plaintiff has not done so already, within five days of this Order and
28 pursuant to the terms of the Agreement, Plaintiff is to dismiss the pending state

1 court action, entitled *David Ettegui v. WB Studio Enterprises Inc.*, Los Angeles
2 Supreme Court, Case No. Case No. 20BBCV00719.

3 19. Pending final determination as to whether the Settlement set forth in
4 the Agreement should be approved, the Plaintiff, Class Members, and the
5 Aggrieved Employees whether directly, representatively, or in any other capacity,
6 whether or not such persons have appeared in this action, shall not institute or
7 prosecute any claims or actions against the Released Parties which in any manner
8 concern the Released Class Claims or the Released PAGA Claims.

9 20. The Court reserves the right to continue the date of the final approval
10 hearing without further individual notice to Class Members. The Court retains
11 jurisdiction to consider all further applications arising out of or in connection with
12 the Settlement.

13 **IT IS SO ORDERED.**

14
15 DATED: _____

16
17 _____
18 HON. MARK C. SCARSI
19 U.S. DISTRICT COURT JUDGE
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EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID ETTEDGUI, an individual,
on behalf of himself and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

WB STUDIO ENTERPRISES INC.,
a corporation; and DOES 1 through
50, inclusive,

Defendant.

CASE NO. **2:20-cv-08053-MCS-(JDEx)**

Assigned to: Hon. Mark C. Scarsi

[PROPOSED] ORDER:

- (1) GRANTING FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT; AND**
- (2) ENTERING FINAL JUDGMENT**

1 On _____ at _____ a.m., a hearing was held on
2 the motion of Plaintiff David Ettedgui (“Plaintiff”) for final approval of the class
3 settlement (the “Settlement”) with Defendant WB Studio Enterprises Inc.
4 (“Defendant”) and payments to the Class, Aggrieved Employees, the Plaintiff,
5 Class Counsel, and the Settlement Administrator.

6 The Parties have submitted their Settlement, which this Court
7 preliminarily approved by its Order on _____, (Docket No. __) (the
8 “Preliminary Approval Order”). In accordance with the Preliminary Approval
9 Order, Class Members and the Aggrieved Employees have been given notice of the
10 terms of the Settlement and the opportunity to comment on and/or object to the
11 Settlement. In addition, Class Members have been given the opportunity to exclude
12 themselves from the Settlement.

13 Having received and considered the Settlement, the supporting papers
14 filed, and the evidence and argument received by the Court before entering the
15 Preliminary Approval Order and at the final approval hearing, the Court **GRANTS**
16 final approval of the Settlement, enters this Final Approval Order and Judgment
17 (“Final Approval Order and Judgment” or “Order”), and **HEREBY ORDERS** and
18 **MAKES DETERMINATIONS** as follows:

19 1. The Court has jurisdiction over this Action and the Settlement pursuant
20 to 28 U.S.C. sections 1132(a) and 1332(d). The Court further has jurisdiction over
21 all parties to the Action, including members of the Class and all Aggrieved
22 Employees. The Court finds that the CAFA Notice has been served as required by
23 the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.* (“CAFA”).

24 2. Except as otherwise specified herein, the Court for purposes of this
25 Final Approval Order and Judgment adopts all defined terms set forth in the Class
26 Action Settlement Agreement (“Agreement”).

27 3. For settlement purposes only, the Court finds that Plaintiff is an
28 adequate representative of the Class and appoints him as such. The Court also

1 approves a representative action under the Private Attorneys General Act,
2 California Labor Code section 2698 et. seq. (“PAGA”) on behalf of the Aggrieved
3 Employees and finds that Plaintiff is also an adequate representative of the
4 Aggrieved Employees.

5 4. The Court finds that Blumenthal Nordrehaug Bhowmik De Blouw
6 LLP has adequately represented the Class and the Aggrieved Employees and are
7 appointed as Class Counsel for the Class and as counsel for the represented
8 Aggrieved Employees.

9 5. In the Preliminary Approval Order, this Court certified the Class and a
10 representative action on behalf of the Aggrieved Employees for settlement purposes
11 only. For settlement purposes only, the Court confirms the certification of the
12 Class which is defined as all individuals who worked for Defendant in California as
13 non-exempt employees who were Tour Guides/Floaters as at any time during the
14 Class Period. The Class Period is June 29, 2016 through May 27, 2021. For
15 settlement purposes only, the Court further confirms the manageability of the
16 representative action on behalf of the Aggrieved Employees, which is defined as all
17 individuals who worked for Defendant in California as non-exempt employees who
18 were Tour Guides/Floaters at any time during the PAGA Period. The PAGA
19 Period is February 17, 2019 through May 27, 2021.

20 6. There were valid Requests for Exclusion to the Settlement in
21 response to the Class Notice. The individuals who validly requested exclusion [are
22 listed here] or [shall be filed under seal within 5 business days].

23 7. Pursuant to the Preliminary Approval Order, the Notice of Pendency of
24 Class Action Settlement and Hearing Date for Court Approval (“Class Notice”) was
25 sent to each Class Member and Aggrieved Employee by first-class mail. The Class
26 Notice informed Class Members of the terms of the Settlement, their right to
27 receive a Settlement Share, their right to comment on or object to the Settlement
28 and/or the attorneys’ fees and costs application, their right to elect not to participate

1 in the Settlement and pursue their own remedies, and their right to appear in person
2 or by counsel at the final approval hearing and be heard regarding approval of the
3 Settlement. The Class Notice further informed Aggrieved Employees of the PAGA
4 settlement, including their right to receive a share of the PAGA Payment and to
5 comment or object to that portion of the Settlement. Adequate periods of time were
6 provided for each of these procedures.

7 8. The Court finds and determines that this notice procedure afforded
8 adequate protections to Class Members and Aggrieved Employees and provides the
9 basis for the Court to make an informed decision regarding approval of the
10 Settlement based on the responses of Class Members and/or Aggrieved Employees.
11 The Court finds and determines that the Class Notice provided in this case was the
12 best notice practicable, which satisfies the requirements of law and due process.

13 9. Class Members and/or Aggrieved Employees filed written
14 objections to the proposed settlement as part of this notice process. [As applicable
15 The Court overrules the objections raised by objecting Class Members and/or
16 Aggrieved Employees.]

17 10. For the reasons stated in the Preliminary Approval Order, the Court
18 finds and determines that the terms of the Settlement are fair, reasonable and
19 adequate to the Class and the Aggrieved Employees when balanced against the
20 probable outcome of extensive and costly litigation. Substantial investigation and
21 research have been conducted such that counsel for the Parties are reasonably able
22 to evaluate their respective positions. It appears to the Court that Settlement will
23 avoid substantial additional costs by all Parties, as well as the delay and
24 uncertainties that would be presented by further prosecution of the Action. The
25 Court finds the Settlement that has been reached is the result of intensive, non-
26 collusive, arm's-length negotiations, including mediation with an experienced,
27 third-party neutral.
28

1 11. The Court finds and determines that all Participating Class Members
2 and Aggrieved Employees will be bound by the Settlement, that the Settlement is
3 ordered finally approved, and that all terms and provisions of the Settlement should
4 be and hereby are ordered to be consummated.

5 12. The Court finds and determines that the all-inclusive Gross Settlement
6 Amount in the amount of Seven Hundred Twenty Thousand Dollars (\$720,000.00)
7 and the Settlement Shares to be paid to the Participating Class Members as
8 provided for by the Settlement are fair and reasonable. The Court hereby grants
9 final approval to and orders the payment of those amounts be distributed to the
10 Participating Class Members out of the Net Settlement Amount in accordance with
11 the Agreement. Pursuant to the terms of the Agreement, the Settlement
12 Administrator is directed to make the payments to each Participating Class Member
13 in accordance with the Agreement.

14 13. The Court finds and determines that the fees and expenses of
15 _____ in administrating the settlement, in the amount of \$_____ [not
16 to exceed \$20,000], are fair and reasonable. The Court hereby grants final approval
17 to and orders that the payment of that amount be paid out of the Gross Settlement
18 Amount in accordance with the Agreement.

19 14. The Court approves the PAGA Payment of \$20,000, which \$15,000
20 shall be allocated to the Labor Workforce Development Agency ("LWDA") as the
21 LWDA's share of the settlement of civil penalties paid under this Agreement
22 pursuant to the PAGA, and \$5,000 will be distributed to the Aggrieved Employees
23 to be allocated based on the number of workweeks worked as an Aggrieved
24 Employee during the PAGA Period.

25 15. The Court finds and determines that the request by Plaintiff and Class
26 Counsel for the Class Representative Service Payment and an attorneys' fees and
27 costs award pursuant to their application for such awards (as limited by the
28 Agreement) are fair and reasonable. The Court hereby grants final approval to and

1 orders that the payment of the amounts of \$ _____ to the Plaintiff for his Class
2 Representative Service Payment [not to exceed \$10,000], \$_____ for
3 attorneys' fees to Class Counsel [not to exceed one-third of the Gross Settlement
4 Amount], and \$_____ for reimbursement of costs [not to exceed \$20,000] be
5 paid out of the Gross Settlement Amount in accordance with the Agreement.

6 16. Upon the occurrence of the Effective Date and the funding of the
7 Settlement, the Participating Class Members shall irrevocably release, acquit, and
8 forever discharge the Released Class Claims as to Defendant and the Released
9 Parties. "Released Class Claims" are any and all claims, liabilities, rights,
10 demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts,
11 actions, and causes of action, of every kind and/or nature whatsoever, which any
12 Participating Class Member now has or at any time ever had against any of the
13 Released Parties that is alleged in the operative Complaint or that could have been
14 alleged based on the facts alleged in the operative Complaint, including: (a) meal
15 period penalties allegedly owed to the Participating Class Members by Defendant
16 during the Class Period; (b) rest period penalties allegedly owed to the Participating
17 Class Members by Defendant during the Class Period; (c) violation or alleged
18 violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and
19 2802 and/or any California Industrial Commission Wage Order or other statute or
20 regulation regarding meal and rest periods; (d) attorneys' fees due or allegedly due
21 under California Labor Code or any other statute, regulation, or contractual
22 provision providing for such fees in connection with the operative Complaint; and
23 (e) penalties or other payments which are based on any of the foregoing, including
24 penalties, premiums, or payments under California Labor Code Sections 201, 202,
25 203, 226, 226.7, 512, and 2802 and/or any violation of the California Industrial
26 Commission Wage Order alleged in the operative Complaint ("Released Class
27 Claims"). Without in any way limiting the foregoing, the Released Class Claims
28 shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens,

1 damages, losses, costs, expenses, debts, actions, and causes of action under statutes
2 and regulations set forth in this paragraph, whether enforced directly or pursuant to
3 California Labor Code Section 2699, California Business and Professions Code
4 Section 17200, *et seq.*, or any other mechanism. The Released Class Claims do not
5 include claims for vested benefits, wrongful termination, unemployment insurance,
6 disability, social security, workers' compensation, and claims outside of the Class
7 Period.

8 17. Upon the occurrence of the Effective Date and the funding of the
9 Settlement, (i) Plaintiff, in his capacity as a private attorney general for, and proxy
10 or agent of, the LWDA, and (ii) the LWDA, as the real party in interest, both will
11 irrevocably release, acquit, and forever discharge Defendant and the Released
12 Parties of all PAGA claims for civil penalties pled in the operative Complaint or in
13 the Class Representative's letter to the LWDA, dated February 17, 2020, which
14 arose during the PAGA Period or could have been alleged based on the factual
15 allegations contained in the operative Complaint or letters sent by Plaintiff that
16 occurred during the PAGA Period as to the Aggrieved Employees, including: (a)
17 PAGA claims predicated on meal period penalties allegedly owed to the Aggrieved
18 Employees by Defendant during the PAGA Period; (b) PAGA claims predicated on
19 rest period penalties allegedly owed to the Aggrieved Employees by Defendant
20 during the PAGA Period; (c) PAGA claims predicated on violation or alleged
21 violation of California Labor Code Sections 201, 202, 203, 226, 226.7, 512, and
22 2802 and/or any California Industrial Commission Wage Order or other statute or
23 regulation regarding meal and rest periods; (d) attorneys' fees due or allegedly due
24 under PAGA in connection with the operative Complaint; and (e) PAGA penalties
25 which are based on any of the foregoing, including PAGA penalties predicated on
26 penalties, premiums, or payments allegedly due under California Labor Code
27 Sections 201, 202, 203, 226, 226.7, 512, and 2802 and/or any California Industrial
28 Commission Wage Order ("Released PAGA Claims"). The Released PAGA

1 Claims exclude any PAGA claims outside the PAGA Period. The release of the
2 Released PAGA Claims shall be effective as to all Aggrieved Employees,
3 regardless of whether an Aggrieved Employee submitted a request to be excluded
4 from the Settlement.

5 18. Upon the occurrence of the Effective Date and the funding of the
6 Settlement, the Plaintiff also irrevocably releases, acquits, and forever discharges
7 Defendant and the Released Parties from any and all claims, transactions or
8 occurrences between them, inclusive of the Released Class Claims, the Released
9 PAGA Claims, and any claims arising from his employment with Defendant and
10 separation of said employment with Defendant ("Plaintiff's Released Claims").
11 Notwithstanding the foregoing, this waiver and release of claims does not extend to
12 any rights which as a matter of law cannot be waived and released by private
13 agreement, including rights to sue to enforce this Agreement and rights to vested
14 benefits, unemployment benefits, disability benefits, social security benefits, and
15 workers' compensation benefits and claims.

16 19. The Released Class Claims, Released PAGA Claims, and Plaintiff's
17 Released Claims include any claim of the kind described in Paragraphs 16, 17,
18 and/or 18 above whether or not Plaintiff or any Class Member or Aggrieved
19 Employee has directly or indirectly assigned, transferred, encumbered, or purported
20 to assign, transfer, or encumber, to any person or entity, whether by operation of
21 law or otherwise, any portion of any Released Class Claims, Released PAGA
22 Claims, or Plaintiff's Released Claims.

23 20. All Participating Class Members shall be bound by all of the applicable
24 releases and other terms of the Agreement and this Final Approval Order and
25 Judgment, whether or not they actually receive or cash their settlement checks for
26 their Settlement Share, and shall not be permitted to seek any further payment or
27 any personal relief of any kind, including any payment for damages, wages,
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1 compensation, fees, costs, penalties, or interest, other than their respective
2 Settlement Share on account of the Released Class Claims.

3 21. All Aggrieved Employees shall be bound by all of the applicable
4 releases and other terms of the Agreement and this Final Approval Order and
5 Judgment, whether or not they actually receive or cash their settlement checks for
6 their share of the PAGA Payment, and shall not be permitted to seek any further
7 payment or any personal relief of any kind, including any payment for damages,
8 wages, compensation, fees, costs, penalties, or interest, other than their share of the
9 PAGA Payment on account of the Released PAGA Claims.

10 22. Each Participating Class Member and each Aggrieved Employee shall
11 not hereafter, individually or as a member of any class or representative proceeding,
12 file any civil action, lawsuit, grievance, demand for arbitration, charge, claim,
13 and/or administrative complaint against Defendant or any of the Released Parties,
14 based upon any Released Class Claims or Released PAGA Claims.

15 23. Nothing in this order shall preclude any action to enforce the Parties'
16 obligations under the Settlement or under this Order, including the requirement that
17 Defendant make payment in accordance with the Agreement.

18 24. If, for any reason, the Effective Date (as defined by the Agreement)
19 does not occur, this Order will be vacated; the Parties will return to their respective
20 positions in this action as those positions existed before the Parties executed the
21 Agreement; and nothing stated in the Agreement or any other papers filed with this
22 Court in connection with the Settlement will be deemed an admission of any kind
23 by any of the Parties or used as evidence against, or over the objection of, any of
24 the Parties for any purpose in this action or in any other action.

25 25. The Parties entered into the Settlement solely for the purpose of
26 compromising and settling disputed claims. Defendant in no way admits any
27 violation of law or any liability whatsoever to Plaintiff, the Class, and/or the
28 Aggrieved Employees, individually or collectively. All liability is expressly denied

1 by Defendant. Defendant further in no way admits that class certification is
2 appropriate as it relates to the Class or that Plaintiff's representative PAGA action
3 is manageable as it relates to the Aggrieved Employees for any purposes unrelated
4 to the Settlement.

5 26. Without affecting the finality of this Final Approval Order and
6 Judgment in any way, the Court retains jurisdiction of all matters relating to the
7 interpretation, administration, implementation, effectuation and enforcement of this
8 Order and the Settlement.

9 27. Each side will bear its own costs and attorneys' fees except as
10 provided by the Agreement and this Order.

11 28. Class Counsel shall provide a copy of this Final Approval Order and
12 Judgment to the LWDA within 10 days after entry.

13 29. By means of this Order, this Court hereby enters final judgment in this
14 action, as defined in Rule 58(a)(1), Federal Rules of Civil Procedure.

15 30. The Parties are hereby ordered to comply with the terms of the
16 Agreement.

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

18
19 DATED: _____

20
21 _____
22 HON. MARK C. SCARSI
23 U.S. DISTRICT COURT JUDGE
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6 WB STUDIO ENTERPRISES INC.

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 DAVID ETTEDGUI, an individual, on
12 behalf of himself and on behalf of all
persons similarly situated,

13 Plaintiff,

14 v.

15 WB STUDIO ENTERPRISES INC., a
16 Corporation; and DOES 1 through 50,
inclusive,

17 Defendant.
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Case No.: 2:20-cv-08053 MCS (JDEx)

Assigned to the Hon. Mark C. Scarsi
Magistrate Judge John D. Early

**DECLARATION OF SHELLY KUNZ
REGARDING CLASS SIZE
BETWEEN JUNE 29, 2016 AND
MARCH 13, 2020 FOR PURPOSES
OF SETTLEMENT AGREEMENT**

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FIRM RESUME

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ATTORNEY BIOGRAPHIES

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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

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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

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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

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Admitted: 2011, California

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

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Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

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

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

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

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

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