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Attorneys for Plaintiff OSCAR ALMANZA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

OSCAR ALMANZA, individually and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

XTREME XPRESS, INC., a California
corporation and DOES 1 through 50, Inclusive,

Defendants.

Case No. 20STCV15387

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 28, 2022

Time: 9:00 a.m.

Judge: Elihu M. Berle

Dept.: 6

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for
5 Plaintiff OSCAR ALMANZA, (hereafter "Plaintiff") in this wage and hour class action filed against
6 XTREME XPRESS, INC. (hereinafter collectively "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's Motion for Final Approval of
8 Class Action Settlement.

9 3. Attached hereto as **Exhibit "A"** are true and correct copies of the fully executed Second
10 Amended Stipulation of Settlement of Class Action Claims and Release of Claims (hereinafter
11 collectively "Settlement Agreement").

12 4. Attached hereto as **Exhibit "B"** is a true and correct copy of the conformed March 30,
13 2022, Preliminary Approval Order.

14 5. Attached hereto as **Exhibit "C"** is a true and correct copy of the December 10, 2021,
15 proof of filing the amended proposed Settlement with the LWDA.

16 6. Attached hereto as **Exhibit "D"** is true and correct copy of the May 31, 2022, proof of
17 filing this motion seeking final approval of this Settlement.

18 **I. INTRODUCTION**

19 7. An objective evaluation of the proposed settlement of \$467,309.60 ("Total Settlement
20 Amount") confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and
21 valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
22 experienced counsel, guided by the wisdom and experience of respected jurist and mediator, Honorable
23 Judge William Pate (Ret.). After deducting any Court-approved attorneys' fees and costs, class
24 representative incentive payments, administration costs, and payments to the Labor & Workforce
25 Development Agency ("LWDA"), the Net Settlement Amount shall be distributed to the Settlement
26 Class Members based on the number of Workweeks they worked while employed by Defendant during
27 the Class Period. *The Class greeted news of the Settlement with unanimous approval as, at the time*

1 *of the filing of this motion, all 619 Class Members choose to participate in the Settlement.*¹ There are
2 zero opt-outs and zero objections to the Settlement. The unanimous approval by the Settlement Class
3 evidences the clear fairness and reasonableness of the Settlement.

4 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour
5 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount
6 of approximately \$257,539.74. This will result in an average Individual Settlement Payment of
7 \$416.06, and high payment of \$3,411.39.

8 9. The relief offered by the Settlement is immediate and is particularly impressive when
9 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
10 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
11 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
12 litigation.

13 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
14 approval under California law and falls well within the range of reasonableness. Accordingly, Class
15 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
16 and, entry of the proposed Final Approval Order and Judgment.

17 **II. OVERVIEW OF THE LITIGATION**

18 11. Defendant is in the transportation industry and provides logistics and freight
19 transportation services to its customers. Defendant provides services such as trucking and delivery
20 services, messenger and courier services, fulfillment services, and warehousing throughout California.
21 Defendant also contracts with other companies, such as Amazon, to conduct deliveries to its customers.
22 Plaintiff was employed by Defendant as a non-exempt parcel delivery driver from November 2017
23 through November 2019. At all times during his employment, Plaintiff earned an hourly wage and was
24 entitled to legally complaint meal and/or rest periods, and minimum, regular and overtime wages for all
25 hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and
26 procedures contained in, among other documents, Defendant's Employee Handbook.

27 ¹ As of the filing date of this Motion, 11 Notices were deemed undeliverable.

12. Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse mandatory business expenses, failed to provide accurate itemized wage statements, and failed to pay all wages due at the time of his separation from employment. including, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation failure. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period polices, compliant wage statements, timely paid all wages due upon separation of employment, and reimbursed employees for required business expenses.

13. On February 13, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice sets forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”).

14. On April 21, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case Number 20STCV15387 (“Class Action”). The Class Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203); and (9) Violation of the Private Attorney General Act (“PAGA”).

15. After the initial Case Management Conference, Plaintiff commenced written discovery. Prior to answering Plaintiff's written discovery, the Parties agreed to collectively mediate the Class Action. To prepare for mediation, the Class Counsel Requested several documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Settlement Class Members. In response to Class Counsel's request, Defendant produced the time and payroll records for approximately 10% of the Settlement Class Members, aggregate workweek and pay period data for 100% of the Settlement Class and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping and meal and rest period policies. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data.

16. On March 18, 2021, the Parties participated in mediation presided over by respected jurist and mediator, Honorable Judge William Pate (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

17. The Court preliminarily approved an initial Total Settlement Amount of \$300,000 based on a total of approximately 10,600 Workweeks worked by the 468 Class Members during the Class Period. The Total Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

18. After this Court granted Preliminary Approval of the Agreement on August 16, 2021, Defendant produced the Class Data to the Settlement Administrator. Upon production of the Class Data to the Settlement Administrator, it was discovered that the actual number of Class Members increased to 619 and the actual number of Workweeks worked by Class Members during the Class Period increased to 17,019. The increased number of Class Members and Workweeks triggered an escalator provision in the Settlement Agreement, thereby increasing the Total Settlement Amount by \$167,309.60. The new Total Settlement Amount in this matter is **\$467,309.60**.

1 19. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
2 the class and should be granted final approval. This is evidenced by the unanimous approval of the
3 Settlement by the Settlement Class and absence of any objections to the Settlement.

4 20. Further supporting final approval, the average Individual Settlement Payment of \$416.06
5 is comparable to settlement payments in similar wage and hour class actions. This result is particularly
6 favorable considering that liability and certification were far from certain. Given the complexities of
7 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
8 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
9 final approval.

10 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

11 **A. Adequate Investigation**

12 21. Months before filing any one of the Actions, Class Counsel began its pre-filing
13 investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy
14 interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his
15 employment, including portions of his earning statements and payroll records. At the conclusion of the
16 interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry.

17 22. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In
18 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
19 Plaintiff's hiring documents, payroll and time records, and Defendant's employee and health and safety
20 handbooks. Class Counsel reviewed and analyzed the documents and determined the documents
21 appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time
22 worked, provide compliant meal and rest periods, and reimburse its employees for required business
23 expenses.

24 23. Additionally, Defendant provided Class Counsel with the names and contact information
25 for various Class Members. During the litigation, Class Counsel interviewed dozens of Class Members
26 to further investigate the allegations asserted in the Actions. As a result of these interviews, Class
27 Counsel obtained dozens of declarations from putative class members in preparation for Plaintiff's
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1 motion for class certification. Ultimately, Class Counsel used these declarations to great affect at the
2 time of mediation.

3 24. After the initial Case Management Conference, Plaintiff propounded written discovery.
4 Prior to answering Plaintiff's written discovery, the Parties agreed to mediate the action. To prepare
5 for mediation, Class Counsel requested several documents and data points to further evaluate Plaintiff's
6 claims and Defendant's liability exposure to the Settlement Class members. In response to Class
7 Counsel's request, Defendant produced the time and payroll records for approximately 10% of the
8 Settlement Class members, aggregate workweek and pay period data for 100% of the Settlement Class,
9 and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal and
10 rest period policies. In total, Defendant produced approximately 2,200 pages containing nearly one-half
11 million unique cells of time and payroll data for Class Counsel to analyze. In addition to formal and
12 informal discovery, witness interview, document review, data analysis and legal research, Class
13 Counsel also researched similar wage and hour actions. Although no two cases are identical, this
14 research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to
15 measure this settlement against. The investigation allowed to Class Counsel to realistically assess the
16 value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that
17 culminated in the proposed settlement now before the Court.

18 25. Class Counsel then retained the statisticians and economists at Berger Consulting Group
19 ("BCG"), to evaluate the Settlement Class Members' payroll and time data. BCG provides data analysis
20 and damage modeling consulting services specializing in wage and hour class actions. BCG's team of
21 financial and data analysts are credentialed and experienced experts in their fields and have provided
22 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze
23 Defendant's time and payroll data.

24 26. BCG analyzed Defendant's time and payroll data to assist in the development of various
25 damage models. Among other things, BCG determined the approximate number of work shift, work
26 weeks, pay periods, average rate of pay, average length of shift and average number of hours worked
27 per week and pay period during the Class Period. BCG also estimated the number of missed, late or
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1 truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class
2 Period, and the amount of off-the-clock work performed by the Settlement Class during the Class
3 Period.

4 27. In advance of mediation, Class Counsel created several damage models predicated on
5 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while
6 accounting for the uncertainties of continued litigation. These damage models informed and guided
7 Class Counsel during the mediated settlement discussions.

8 28. In addition to formal and informal discovery, witness interviews, document review, data
9 analysis and legal research, Class Counsel also researched similar wage and hour actions. Here, Class
10 Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United States District Court,
11 Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage and hour class action
12 against Defendant. In that case, Defendant resolved the class claims asserted on behalf of 3,700 class
13 members (a number similar to class members covered by this Settlement) for the period between
14 October 11, 2012 and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are
15 identical, this research provided Class Counsel with a marker to inform settlement discussions and,
16 ultimately, to measure this settlement against.

17 29. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
18 determining Plaintiff's suitability as a putative class representative through interviews, background
19 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
20 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
21 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
22 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
23 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
24 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief and (9)
25 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
26 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
27 independent assessment of the reasonableness of the terms to which the parties have agreed.

30. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement

B. The Parties Settled at Mediation

31. The Settlement is the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service award was not negotiated until after the parties agreed to the Total Settlement Amount and many other terms.

C. Class Counsel is Experienced in Similar Litigation

32. Plaintiff is represented by competent and experienced counsel to pursue his claims. I established the JCL Law Firm, APC (“Firm”), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Tesla Stone (Paralegal), Sydney Castillo-Johnson (Associate Attorney), Jennifer Hemming (Legal Secretary), and Sara Christensen (Legal Assistant).

33. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved Employees throughout this action.

34. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 14 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

35. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action settlement.)

e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

1 f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case
2 No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson
3 approved \$550 billing rate in a representative California Labor Code Private Attorney
4 General Act settlement).

5 g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
6 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
7 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as
8 class counsel for the settlement class and as representative PAGA counsel the State of
9 California and the Aggrieved Employees.)

10 h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
11 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
12 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
13 employees by the JCL Law Firm, APC.)

14 i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
15 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the
16 JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for,
17 *inter alia*, missed meal and rest periods.)

18 j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case
19 No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
20 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
21 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

22 k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
23 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
24 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
25 *inter alia*, off-the-clock work.)
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- l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)
- p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

1 s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
2 No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm,
3 APC, as Class Counsel and granted preliminary approval for the wage and hour class
4 action settlement involving nearly 900 current and former employees. Final approval
5 scheduled for October 4, 2019)

6 t. *Almanza v. The Express Group, Inc.,* San Bernardino Superior Court Case No.
7 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
8 as Class Counsel and granted final approval for a wage and hour class action settlement
9 for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

10 u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court,* Case No. 37-2017-
11 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
12 APC, as Class Counsel and granted final approval for a wage and hour wage class action
13 settlement involving misclassified house cleaners.)

14 v. *Burke v. Friendship Hotel, LLC,* San Diego County Superior Court Case No. 37-
15 2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an
16 unlawful housing class action arising under Civil Code Section 1940.2)

17 w. *Terrado et al., v. Accredited Debt Relief, LLC,* San Diego County Superior Court
18 Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock
19 appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage
20 and hour class action settlement for meal and rest period violations);

21 x. *Macaspac v. San Antonio Regional Hospital,* San Bernardino Superior Court Case
22 No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm,
23 APC, as Class Counsel and granted final approval for a wage and hour class action
24 settlement involving claims for on duty meal and rest periods.);

25 y. *Summerlin et al. v. Maplebear, Inc. dba Instacart,* Los Angeles Superior Court
26 Case No. BC603030 (2018 - certified and settled wage and hour class action.)
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1 z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-
2 00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and
3 rest periods)
4 aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-
5 00012373-CU-OE-CTL (2017 - Certified and settled class action for employee
6 misclassification);
7 bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No.
8 BC617160 (2017 - Certified and settled wage and hour class action.);
9 cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case
10 No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
11 dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-
12 CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices
13 arising out of Civil Code Section 1940.1);
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15 36. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a
16 favorable verdict for the firm’s clients.

17 37. Finally, I have published appellate experience in *William Blanchette et al., v. The*
18 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

19 38. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers,
20 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers,
21 Rising Star list recognizes the top 2.5% of eligible attorneys. (see
22 https://www.superlawyers.com/about/selection_process.html.)

23 **D. Strength of Plaintiff’s Case**

24 39. Here, the Settlement is clearly within the “ballpark” of reasonableness because the
25 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily
26 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*,
27 91 Cal. App. 4th at 250. While the Total Settlement Amount of \$467,309.60 represents a discount on
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1 Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full
2 amount of the estimated damages at trial, this compromise is reasonable because the formidable
3 defenses raised by Defendant presented a risk that could award significantly less in damages than
4 Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation,
5 resulting in added fees and costs without any guarantee of recovery for the Class.

6 40. Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to
7 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action
8 or, at least, drastically undercut Plaintiff's claims.

9 **E. Risks of Continued Litigation**

10 41. With respect to the most immediate challenge, i.e., class certification, the risks attendant
11 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
12 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
13 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
14 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
15 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
16 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
17 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
18 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
19 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
20 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
21 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
22 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
23 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
24 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
25 certification of driver meal and rest period claims based on the predominance of individual issues).
26 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
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1 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
2 settlement.

3 42. Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
4 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
5 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
6 drastically affect the value of Plaintiff's claims and, in fact, already has. Recently, the California Court
7 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue
8 the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security*
9 *Services, Inc.*, 40 Cal.App.5th 444 (2019) (review granted). The *Naranjo* decision gutted Plaintiff's
10 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties
11 predicated on rest period violations.

12 43. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber*
13 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.
14 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little
15 doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to
16 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years
17 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
18 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
19 outweigh an uncertain result three or more years in the future.

20 44. Class Representative and Class Counsel recognize the expense and length of a trial
21 against Defendant through possible appeals which could take another three years. In arriving at their
22 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
23 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
24 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
25 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
26 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
27 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial

monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable and adequate, and should be granted final approval. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).) Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

F. The Total Settlement Amount is Fair and Reasonable

45. The Total Settlement Amount of \$467,309.60 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation.

1 The various models were informed by Class Counsel's investigation, including the analysis of a
2 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
3 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
4 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 13%
5 and 50% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of
6 mediation.

7 46. Clearly the goal of this litigation to obtain redress for the class has been met by this
8 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
9 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
10 approval.

11 IV. THE PENALTIES UNDER PAGA ARE REASONABLE

12 47. Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of
13 \$15,000 which is 3.2% of the Total Settlement Amount. This amount falls well within the range of
14 approved PAGA Settlements. For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
15 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of
16 \$5 per pay period. Under the PAGA, courts have considerable discretion to reduce the penalty award.
17 In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA
18 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, as the court found maximum penalties
19 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
20 civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal.
21 App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by
22 the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*,
23 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

24 48. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less
25 than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Seventy-Five percent
26 (75%) of the PAGA Settlement (\$11,250) will be paid to the LWDA ("LWDA Payment") with the
27

1 remaining twenty-five percent (25%) to be distributed to the Aggrieved Employees, which is within the
2 range of PAGA penalties approved by courts and should be approved.

3 49. Further, on June 16, 2021, Class Counsel gave the LWDA notice of this Settlement and
4 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
5 the LWDA. On December 10, 2021, Class Counsel filing an amended copy of the Settlement and the
6 Motion for Preliminary Approval with the LWDA. On May 31, 2022, Plaintiff gave the LWDA notice
7 of this motion seeking final approval of this settlement.

8 I declare under the penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct. Executed this 31st day of May 2022, at San Diego, California.

10
11 **JCL LAW FIRM, APC**

12 By: 
13 Jean-Claude Lapuyade
14 Attorneys for Plaintiff
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EXHIBIT A

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 5440 MOREHOUSE DRIVE, SUITE 3600
4 SAN DIEGO, CA 92121
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 5440 MOREHOUSE DRIVE, SUITE 3600
10 SAN DIEGO, CA 92121
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

13 **LAW OFFICE OF MANDEEP S. RUPAL**
14 MANDEEP S. RUPAL, ESQ.
15 4740 GREEN RIVER ROAD, SUITE 207
16 CORONA, CA 92880
17 TEL: (951) 460-0830

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **IN AND FOR THE COUNTY OF LOS ANGELES**

20 OSCAR ALMANZA, individually and on
21 behalf of all persons similarly situated,

22 Plaintiffs,

23 vs.

24 XTREME XPRESS, INC., a California
25 corporation and DOES 1 through 50,
26 Inclusive,

27 Defendants.

Case No. 20STCV15387

[Action Filed 04/21/2020]

**SECOND AMENDED STIPULATION OF
SETTLEMENT OF CLASS ACTION
CLAIMS AND RELEASE OF CLAIMS**

Judge: Hon. Elihu M. Berle
Dept.: 6

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiff OSCAR ALMANZA (hereinafter "Plaintiff"), individually and on behalf of the Settlement Class, and Defendant XTREME XPRESS, INC (hereinafter "Defendants"):

I. DEFINITIONS

- A. "Action" shall mean *Almanza v. Xtreme Xpress, Inc.*, currently pending in the Superior Court for the County of Los Angeles, Case No. 20STCV15387 filed April 21, 2020, as a class action and representative action pursuant to the Private Attorney General Act of 2004, Labor Code § 2698 *et seq.* (hereinafter, "PAGA").
- B. "Aggrieved Employees" shall mean all of Defendant's current and former non-exempt employees employed in California between February 13, 2019 and March 18, 2021.
- C. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of Class Action and Release of Claims.
- D. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay of Zakay Law Group, APLC.
- E. "Class Counsel Award" means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys' fees currently not to exceed one-third of the Total Settlement Amount currently estimated to be \$155,769.86 out of \$467,309.60 plus costs and expenses not to exceed \$15,000.00. Class Counsel's award for attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC.
- F. "Class Data" means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Settlement Class Member's full name; last known address; Social Security Number; start dates and end dates of employment, and number of

1 Workweeks as a Settlement Class Member during the Class Period and PAGA Period
2 and email address, if known.

3 G. "Class Period" means the period from April 21 2016 and March 18, 2021.

4 H. "Class Representative Service Award" means the amount that the Court authorizes to
5 be paid to the Class Representative, in addition to her Individual Settlement Payment
6 and his pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
7 in assisting with the prosecution of the Action and in exchange for executing a
8 General Release of Defendant.

9 I. "Class Representative" means Plaintiff OSCAR ALMANZA.

10 J. "Court" means the Superior Court for the State of California, County of San Diego

11 K. "Defendant" shall mean XTREME XPRESS, INC., a California corporation.

12 L. "Effective Date" means the earliest date, following entry by the Court of an order
13 and judgment finally approving this Settlement, upon which one of the following have
14 occurred: (i) if no objection is filed to the settlement and no objector appears at the
15 hearing on final approval, the date of the Court's entry of the order granting final
16 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
17 hearing on final approval, then the earlier of the following: (a) the expiration of all
18 potential appeal periods without a filing of a notice of appeal of the final approval
19 order or judgment; (b) final affirmance of the final approval order and judgment by
20 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
21 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
22 the final approval order and judgment is no longer subject to further judicial review.

23 M. "Funding Date" shall mean the date the date the Total Settlement Amount is fully
24 funded by Defendant into the QSF in accord with the terms of this Agreement.

25 N. "Individual Settlement Payment" means the amount payable from the Net Settlement
26 Amount to each Settlement Class Member and excludes any amounts distributed to
27 Settlement Class Members pursuant to PAGA
28

- 1 O. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
2 Counsel Award, Class Representative Service Award, PAGA Settlement, and
3 Settlement Administration Costs.
- 4 P. "Notice Packet" means the Class Notice to be provided to the Settlement Class
5 Members by the Settlement Administrator in the form set forth as Exhibit A to this
6 Agreement (other than formatting changes to facilitate printing by the Settlement
7 Administrator).
- 8 Q. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
9 Labor Code § 2698 *et seq.*
- 10 R. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
11 for each Aggrieved Employee divided by the sum total of the Workweeks for all
12 Aggrieved Employees during the PAGA Period.
- 13 S. "PAGA Period" means the period between February 13, 2019 and March 18, 2021.
- 14 T. "PAGA Settlement" shall mean Fifteen Thousand Dollars (\$15,000.00) to be
15 allocated from the Total Settlement Amount.
- 16 U. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
17 Plaintiff or Defendant, individually.
- 18 V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
19 divided by the sum total Workweeks for all Settlement Class Members.
- 20 W. "Plaintiff" shall mean OSCAR ALMANZA.
- 21 X. "QSF" means the Qualified Settlement Fund established, designated and maintained
22 by the Settlement Administrator to fund the Total Settlement Amount.
- 23 Y. "Released Claims" means all class claims alleged in the operative complaint which
24 occurred during the Class Period, and expressly excluding all other claims, including
25 claims for vested benefits, wrongful termination, unemployment insurance, disability,
26 social security, workers' compensation, and class claims outside of the Class Period.
- 27 Z. "Released PAGA Claims" mean any and all PAGA Claims alleged in the operative
28 complaint and Plaintiff's notice to the LWDA which occurred during the PAGA

Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period.

AA. "Released Parties" means Defendant.

BB. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on which Settlement Class Members may submit requests for exclusion or objections to the Settlement.

CC. "Settlement" means the disposition of the Action pursuant to this Agreement.

DD. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Total Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. *All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.*

EE. "Settlement Class Members" or "Settlement Class" means all of Defendant's current and former non-exempt employees employed in California April 21, 2016 and March 18, 2021. The "Settlement Class Members" shall not include any person who submits a timely and valid request for exclusion as provided in this Agreement.

FF. "Total Settlement Amount" means Four Hundred Sixty-Seven Thousand Three Hundred Nine Dollars and Sixty Cents (\$467,309.60) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and

1 *exclusive* of the employer's share of payroll tax, if any, triggered by any payment
2 under this Settlement.

3 GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement
4 Amount, means the number of weeks of employment during the Class Period that
5 each Settlement Class Member worked while paid on a draw. The Settlement
6 Administrator will calculate the number of Workweeks by calculating the number of
7 days each Settlement Class Member was employed during the Class Period, dividing
8 by seven (7), and rounding up to the nearest whole number. For purpose of
9 determining the Individual Settlement Payments and Payment Ratio, each Settlement
10 Class Member who is a former employee no longer working for Defendant will be
11 assigned four (4) additional Workweeks. For purposes of distributing the PAGA
12 Settlement to the Settlement Class, Workweeks means the number of weeks of
13 employment for each Settlement Class Member during the PAGA Period.

14 **II. RECITALS**

15 A. On February 13, 2020, Plaintiff filed a Notice of Violations with the Labor and
16 Workforce Development Agency (LWDA) and served the same on Defendant.

17 B. On April 21, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior
18 Court for:

- 19 1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;
- 20 2. failure to pay minimum wages in violation of California Labor Code sections
21 1194, 1197 and 1197.1;
- 22 3. failure to pay overtime wages in violation of California Labor Code sections
23 510 *et seq.*;
- 24 4. failure to provide required meal periods in violation of California Labor Code
25 sections 226.7 and 512;
- 26 5. failure to provide required rest periods in violation of California Labor Code
27 sections 226.7 and 512;
- 28

1 6. failure to reimburse employees for required business expenses in violation of
2 California Labor Code section 2802;

3 7. failure to provide accurate itemized wage statements in violation of California
4 Labor Code section 226; and

5 8. failure to provide wages when due in violation of California Labor Code
6 sections 201, 202 and 203.

7 9. Violations of the Private Attorney General Act ("PAGA") Labor Code §§
8 2698 et seq.

9 C. On March 18, 2021, the Parties participated in mediation presided over by the
10 Honorable Judge William Pate (Ret.), a respected jurist and mediator. Following the
11 mediation, each side, represented by its respective counsel, were able to agree to settle
12 the Action based on a mediator's proposal which was memorialized in the form of a
13 Memorandum of Understanding.

14 D. This Agreement replaces and supersedes the Memorandum of Understanding and any
15 other agreements, understandings, or representations between the Parties. This
16 Agreement represents a compromise and settlement of highly disputed claims.
17 Nothing in this Agreement is intended or will be construed as an admission by
18 Defendant that the claims in the Action of Plaintiff or the Settlement Class Members
19 have merit or that Defendant bears any liability to Plaintiff or the Class on those
20 claims or any other claims, or as an admission by Plaintiff that Defendant's defenses
21 in the Action have merit. The Parties agree to certification of the Class for purposes
22 of this Settlement only. If for any reason the settlement does not become effective,
23 Defendant reserves the right to contest certification of any class for any reason and
24 reserves all available defenses to the claims in the Action.

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

26
27 ///

1 **III. TERMS OF AGREEMENT**

2 A. Settlement Consideration and Settlement Payments by Defendant.

3 1. Settlement Consideration. In full and complete settlement of the Action, and
4 in exchange for the releases set forth below, Defendant will pay the sum of
5 the Individual Settlement Payments, the Class Representative Service Award,
6 the Class Counsel Award, PAGA Settlement, and the Settlement
7 Administration Costs, as specified in this Agreement, equal to the Total
8 Settlement Amount of Four Hundred Sixty-Seven Thousand Three Hundred
9 Nine Dollars and Sixty Cents (\$467,309.60). The Parties agree that this is a
10 non-reversionary Settlement and that no portion of the Total Settlement
11 Amount shall revert to Defendant. Other than the Defendant's share of
12 employer payroll taxes, or as otherwise specified in the Agreement, Defendant
13 shall not be required to pay more or less than the Total Settlement Amount,
14 except as provided for hereinbelow.

15 2. Class Size. , Defendant represents that the Settlement Class is comprised of
16 619 individuals that collectively worked approximately 17,019 Workweeks
17 ("Projected Workweeks") during the Class Period. In regard hereto,
18 Defendant will provide a declaration under penalty of perjury confirming the
19 number of Class Members and Workweeks they worked during the Class
20 Period prior to the filing of the motion for preliminary approval.

21 3. Settlement Payment. Defendant and the Released Parties, and each of them,
22 are jointly and severally liable for payment of the Total Settlement Amount.
23 The Total Settlement Amount shall be paid in two (2) installments. Defendant
24 shall pay, via wire transfer, the first installment of the Total Settlement in the
25 amount of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) on
26 or before March 18, 2022. Defendant shall pay the second installment in the
27 amount of One Hundred Sixty-Seven Thousand Three Hundred Nine Dollars
28 and Sixty Cents (\$167,309.60) on or before February 22, 2023.

1 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
2 payroll taxes is in addition to the Total Settlement Amount and shall be paid
3 by Defendant within ten (10) calendar days of request by the Settlement
4 Administrator.

5 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
6 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
7 release the Released Parties from the Released Claims for the Class Period.

8 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
9 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
10 California release the Released Parties from the PAGA Released Claims for the PAGA
11 Period.

12 D. General Release by Plaintiff. As of the Funding Date, in consideration for the
13 consideration set forth in this Agreement, Plaintiff, for himself, waives, releases,
14 acquits and forever discharges the Released Parties from any and all claims, actions,
15 charges, complaints, grievances and causes of action, of whatever nature, whether
16 known or unknown, which exist or may exist on their behalf as of the date of this
17 Agreement, including but not limited to any and all tort claims, contract claims, wage
18 claims, wrongful termination claims, disability claims, benefit claims, public policy
19 claims, retaliation claims, statutory claims, personal injury claims, emotional distress
20 claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
21 claims, and any and all claims arising under any federal, state or other governmental
22 statute, law, regulation or ordinance, including, but not limited to claims for violation
23 of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of
24 California's Industrial Welfare Commission, other state wage and hour laws, the
25 Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA),
26 the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
27 1964, the California Fair Employment and Housing Act, the California Family Rights
28 Act, the Family Medical Leave Act, California's Whistleblower Protection Act,

California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims, rights or benefits that they may have under California Civil Code § 1542, which provides as follows:

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.

Plaintiff is a creditor and/or “releasing party” within the meaning of Civil Code § 1542. Plaintiff may discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff’s employment with Defendant. The Parties further acknowledge, understand, and agree that this representation and commitment is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation and commitment.

E. Conditions Precedent: This Settlement will become final and effective only upon the occurrence of all of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of

any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and

4. Defendant fully funds the Total Settlement Amount.

F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

G. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

1 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
2 effect of the payments called for, and Settlement Class Members are not relying on
3 any statement or representation by the Parties in this regard. Settlement Class
4 Members understand and agree that they will be responsible for the payment of any
5 taxes and penalties assessed on the Individual Settlement Payments described and will
6 be solely responsible for any penalties or other obligations resulting from their
7 personal tax reporting of Individual Settlement Payments.

8 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
9 the “acknowledging party” and each Party to this Agreement other than the
10 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
11 of this Agreement, and no written communication or disclosure between or among the
12 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
13 such communication or disclosure constitute or be construed or be relied upon as, tax
14 advice within the meaning of United States Treasury Department circular 230 (31 CFR
15 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
16 her or its own, independent legal and tax counsel for advice (including tax advice) in
17 connection with this Agreement, (b) has not entered into this Agreement based upon
18 the recommendation of any other Party or any attorney or advisor to any other Party,
19 and (c) is not entitled to rely upon any communication or disclosure by any attorney
20 or adviser to any other party to avoid any tax penalty that may be imposed on the
21 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
22 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
23 strategies (regardless of whether such limitation is legally binding) upon disclosure by
24 the acknowledging party of the tax treatment or tax structure of any transaction,
25 including any transaction contemplated by this Agreement.

26 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
27 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
28 which shall include this Settlement Agreement.

1 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
2 establishing and administering the QSF; calculating, processing and mailing payments
3 to the Class Representatives, Class Counsel, LWDA and Settlement Class Members;
4 printing, mailing and emailing the Notice Packets to the Settlement Class Members as
5 directed by the Court; establishing and maintaining the a landing page hosted on its
6 website to containing information about the Settlement; receiving and reporting the
7 objections and requests for exclusion; calculating, deducting and remitting all legally
8 required taxes from Individual Settlement Payments and distributing tax forms for the
9 Wage Portion and Non-Wage Portion of the Individual Settlement Payments;
10 processing and mailing tax payments to the appropriate state and federal taxing
11 authorities; providing declaration(s) as necessary in support of preliminary and/or final
12 approval of this Settlement; posting notice of entry of judgment on its website; and
13 other tasks as the Parties mutually agree or the Court orders the Settlement
14 Administrator to perform. The Settlement Administrator shall keep the Parties timely
15 apprised of the performance of all Settlement Administrator responsibilities by among
16 other things, sending a weekly status report to the Parties' counsel stating the date of
17 the mailing, the of number of Elections Not to Participate in Settlement it receives
18 (including the numbers of valid and deficient), and number of objections received.

19 L. Notice Procedure.

20 1. Class Data. No later than fourteen (14) calendar days after the Preliminary
21 Approval Date, Defendant shall provide the Settlement Administrator with the
22 Class Data for purposes of preparing and mailing Notice Packets to Settlement
23 Class Members. Defendant shall verify the total number of Workweeks at the
24 time Class Data is provided to the Settlement Administer.

25 2. Notice Packets.

26 a) The Notice Packet shall contain the Notice of Class Action Settlement
27 in a form substantially similar to the form attached as Exhibit A. The
28

1 Notice of Class Action Settlement shall inform Settlement Class
2 Members that they need not do anything in order to receive an
3 Individual Settlement Payment and to keep the Settlement
4 Administrator apprised of their current mailing address, to which the
5 Individual Settlement Payments will be mailed following the date
6 Defendant deposits the first installment of the Total Settlement
7 Amount into the QSF. The Notice of Class Action Settlement shall set
8 forth the release to be given by all members of the Settlement Class
9 who do not request to be excluded from the Settlement Class in
10 exchange for an Individual Settlement Payment, the number of
11 Workweeks worked by each Settlement Class Member during the
12 Class Period, and the estimated amount of their Individual Settlement
13 Payment if they do not request to be excluded from the Settlement.
14 The Settlement Administrator shall use the Class Data to determine
15 Class Members' Workweeks.

16 b) The Notice Packet's mailing envelope shall include the following
17 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
18 ENTITLED TO PARTICIPATE IN A CLASS ACTION
19 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
20 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
21 NOTICE."

22 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
23 the Settlement Administrator will perform a search based on the National
24 Change of Address Database to update and correct any known or identifiable
25 address changes. No later than fourteen (14) calendar days after receiving the
26 Class Data from Defendant, the Settlement Administrator shall mail and email
27 copies of the Notice Packet to all Settlement Class Members via regular First-
28 Class U.S. Mail and electronic mail. The Settlement Administrator shall

1 exercise its best judgment to determine the current mailing address for each
2 Settlement Class Member. The address identified by the Settlement
3 Administrator as the current mailing address shall be presumed to be the best
4 mailing address for each Settlement Class Member.

5 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
6 Administrator as non-delivered on or before the Response Deadline shall be
7 re-mailed to any forwarding address provided. If no forwarding address is
8 provided, the Settlement Administrator shall promptly attempt to determine a
9 correct address by lawful use of skip-tracing, or other search using the name,
10 address and/or Social Security number of the Settlement Class Member
11 involved, and shall then perform a re-mailing, if another mailing address is
12 identified by the Settlement Administrator. In addition, if any Notice Packets,
13 which are addressed to Settlement Class Members who are currently
14 employed by Defendant, are returned to the Settlement Administrator as non-
15 delivered and no forwarding address is provided, the Settlement Administrator
16 shall notify Defendant. Defendant will request that the currently employed
17 Settlement Class Member provide a corrected address, and transmit to the
18 Administrator any corrected address provided by the Settlement Class
19 Member. Settlement Class Members who received a re-mailed Notice Packet
20 shall have their Response Deadline extended fifteen (15) days from the
21 original Response Deadline.

22 5. Disputes Regarding Individual Settlement Payments. Settlement Class
23 Members will have the opportunity, should they disagree with Defendant's
24 records regarding the start and end dates of employment while paid on a draw,
25 as stated on their Employment Information Sheet, to provide documentation
26 and/or an explanation to show contrary dates. If there is a dispute, the
27 Settlement Administrator will consult with the Parties to determine whether
28 an adjustment is warranted. The Settlement Administrator shall determine the

1 eligibility for, and the amounts of, any Individual Settlement Payments under
2 the terms of this Agreement. The Settlement Administrator's determination
3 of the eligibility for and amount of any Individual Settlement Payment shall
4 be binding upon the Settlement Class Member and the Parties.

5 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
6 by the Settlement Administrator concerning the administration of the
7 Settlement will be resolved by the Court under the laws of the State of
8 California. Before any such involvement of the Court, counsel for the Parties
9 will confer in good faith to resolve the disputes without the necessity of
10 involving the Court.

11 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
12 Packet shall state that Settlement Class Members who wish to exclude
13 themselves from the Settlement must submit a written request for exclusion
14 by the Response Deadline. The written request for exclusion must state that
15 the Settlement Class Member wishes to exclude himself or herself from the
16 Settlement and (1) must contain the name, address, and the last four digits of
17 the Social Security number of the person requesting exclusion; (2) must be
18 signed by the Settlement Class Member; (3) must be postmarked or fax
19 stamped by the Response Deadline and returned to the Settlement
20 Administrator at the specified address or fax telephone number; and (4)
21 contain a typewritten or handwritten notice stating in substance: "I wish to
22 opt out of the settlement of the class action lawsuit entitled *Almanza v. Xtreme*
23 *Xpress.*, currently pending in the Superior Court for the County of Los
24 Angeles, Case No. 20STCV15387. I understand that by requesting to be
25 excluded from the settlement, I will receive no money from the Settlement
26 described in this Notice." The request for exclusion will not be valid if it is
27 not timely submitted, if it is not signed by the Settlement Class Member, or if
28 it does not contain the name and address and last four digits of the Social

1 Security number of the Settlement Class Member. The date of the postmark
2 on the mailing envelope or fax stamp on the request for exclusion shall be the
3 exclusive means used to determine whether the request for exclusion was
4 timely submitted. Any Settlement Class Member who requests to be excluded
5 from the Settlement Class will not be entitled to an Individual Settlement
6 Payment and will not be otherwise bound by the terms of the Settlement or
7 have any right to object, appeal or comment thereon. However, any
8 Settlement Class Member that submits a timely request for exclusion that is
9 also a member of the Aggrieved Employees will still receive their pro rata
10 share of the PAGA Settlement, as specified below, and in consideration, will
11 be bound by the Release by the Aggrieved Employees as set forth herein.
12 Settlement Class Members who fail to submit a valid and timely written
13 request for exclusion on or before the Response Deadline shall be bound by
14 all terms of the Settlement and any final judgment entered in this Action if the
15 Settlement is approved by the Court. No later than fourteen (14) calendar days
16 after the Response Deadline, the Settlement Administrator shall provide
17 counsel for the Parties with a final list of the Settlement Class Members who
18 have timely submitted written requests for exclusion. At no time shall any of
19 the Parties or their counsel seek to solicit or otherwise encourage members of
20 the Settlement Class to submit requests for exclusion from the Settlement.

- 21 8. Objections. The Notice of Class Action Settlement contained in the Notice
22 Packet shall state that Settlement Class Members who wish to object to the
23 Settlement must mail to the Settlement Administrator a written statement of
24 objection ("Notice of Objection") by the Response Deadline. The postmark
25 date of mailing shall be deemed the exclusive means for determining that a
26 Notice of Objection was served timely. The Notice of Objection must be
27 signed by the Settlement Class Member and state: (1) the case name and
28 number; (2) the name of the Settlement Class Member; (3) the address of the

1 Settlement Class Member; (4) the last four digits of the Settlement Class
2 Member's Social Security number; (4) the basis for the objection; and (5) if
3 the Settlement Class Member intends to appear at the Final
4 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
5 to make objections in writing in the manner specified above may make their
6 objections orally at the Final Approval/Settlement Fairness Hearing with the
7 Court's permission. Settlement Class Members will have a right to appear at
8 the Final Approval/Settlement Fairness Hearing in order to have their
9 objections heard by the Court. At no time shall any of the Parties or their
10 counsel seek to solicit or otherwise encourage Settlement Class Members to
11 file or serve written objections to the Settlement or appeal from the Order and
12 Final Judgment. Settlement Class Members who submit a written request for
13 exclusion may not object to the Settlement.

14 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
15 the Total Settlement Amount on or before the Funding Date, plus any employer's share
16 of payroll taxes as mandated by law within the time specified herein.

17 1. Individual Settlement Payments. Individual Settlement Payments shall be
18 paid from the Net Settlement Amount and shall be paid after Defendant
19 deposits the first installment of the Total Settlement Amount in to the QSF
20 pursuant to the formula set forth below.

21 a) Calculation of Individual Settlement Payments. Using the Class Data,
22 the Settlement Administrator shall add up the total number of
23 Workweeks for all Settlement Class Members. The respective
24 Workweeks for each Settlement Class Member will be divided by the
25 total Workweeks for all Settlement Class Members, resulting in the
26 Payment Ratio for each Settlement Class Member. Each Settlement
27 Class Member's Payment Ratio will then be multiplied by the Net
28 Settlement Amount to calculate each Settlement Class Member's

1 estimated Individual Settlement Payments. Each Individual
2 Settlement Payment will be reduced by any legally mandated
3 employee tax withholdings (e.g., employee payroll taxes, etc.).
4 Individual Settlement Payments for Class Members who submit valid
5 and timely requests for exclusion will be redistributed to Settlement
6 Class Members who do not submit valid and timely requests for
7 exclusion on a pro rata basis based on their respective Payment Ratios.

8 b) Calculation of Individual Payments to the Aggrieved Employees.

9 Using the Class Data, the Settlement Administrator shall add up the
10 total number of Workweeks for all Aggrieved Employees during the
11 PAGA Period. The respective Workweeks for each Aggrieved
12 Employee will be divided by the total Workweeks for all Aggrieved
13 Employees, resulting in the “PAGA Payment Ratio” for each
14 Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment
15 Ratio will then be multiplied by the Aggrieved Employee Payment to
16 calculate each Aggrieved Employee’s estimated Individual PAGA
17 Settlement.

18 c) Allocation of Individual Settlement Payments. For tax purposes,

19 Individual Settlement Payments shall be allocated and treated as
20 follows: 25% as wages (“Wage Portion”); 75% as penalties and
21 interest (“Non-Wage Portion”). The Wage Portion is subject to wage
22 withholdings and shall be reported on IRS Form W-2. The Non-Wage
23 Portion shall not be subject to wage withholdings and shall be reported
24 on IRS Form 1099.

25 d) Allocation of Aggrieved Employee Payments. For tax purposes,

26 Aggrieved Employee Settlement Payments shall be allocated and
27 treated as 100% penalties and shall be reported on IRS Form 1099.
28

1 e) Mailing. Individual Settlement Payments and Aggrieved Employee
2 Payments shall be mailed by regular First-Class U.S. Mail to
3 Settlement Class Members' last known mailing address no later than
4 fifteen (15) calendar days after the Defendant deposits the first
5 installment of the Total Settlement Amount into the QSF..

6 f) Expiration. Any checks issued to Settlement Class Members shall
7 remain valid and negotiable for one hundred and eighty (180) days
8 from the date of their issuance. If a Settlement Class Member does not
9 cash his or her settlement check within 90 days, the Settlement
10 Administrator will send a letter to such persons, advising that the
11 check will expire after the 180th day, and invite that Settlement Class
12 Member to request reissuance in the event the check was destroyed,
13 lost or misplaced. In the event an Individual Settlement Payment
14 check has not been cashed within one hundred and eighty (180) days,
15 all funds represented by such uncashed checks, plus any interest
16 accrued thereon, shall be distributed consistent with California Code
17 of Civil Procedure Section 384 as follows: to The Children's
18 Advocacy Institute (CAI), founded at the nonprofit University of San
19 Diego School of Law in 1989. Neither Class Counsel nor Defendant's
20 counsel has any interest, pecuniary or otherwise, in CAI.

21 2. Class Representative Service Award. In addition to the Individual Settlement
22 Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award
23 of not more than \$10,000 as the Class Representative Service Award.
24 Defendant does not presently intend to oppose a Class Representative Service
25 Award of no more than \$10,000 for Plaintiff. The Settlement Administrator
26 shall pay the Class Representative Service Award, either in the amount stated
27 herein if approved by the Court or some other amount as approved by the
28 Court, to Plaintiff from the Total Settlement Amount no later than ten (10)

1 calendar days after the Defendant deposits the first installment of the Total
2 Settlement Amount into the QSF. Any portion of the requested Class
3 Representative Service Award that is not awarded to the Class Representatives
4 shall be part of the Net Settlement Amount and shall be distributed to
5 Settlement Class Members as provided in this Agreement. The Settlement
6 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her Class
7 Representative Service Award. Plaintiff shall be solely and legally
8 responsible to pay any and all applicable taxes on his Class Representative
9 Service Award and shall hold harmless the Released Parties from any claim
10 or liability for taxes, penalties, or interest arising as a result of the Class
11 Representative Service Awards. The Class Representative Service Award
12 shall be in addition to Plaintiff's Individual Settlement Payment as a
13 Settlement Class Member. Approval of this Settlement shall not be
14 conditioned on Court approval of the requested amount of the Class
15 Representative Service Award. In the event that the Court reduces or does not
16 approve the requested Class Representative Service Award, Plaintiff shall not
17 have the right to revoke the Settlement, and it will remain binding.

- 18 3. Class Counsel Award. Defendant understands a motion by Class Counsel for
19 attorneys' fees not to exceed one-third of the Total Settlement Amount
20 currently estimated to be \$155,769.86 plus costs and expenses supported by
21 declaration not to exceed Fifteen Thousand Dollars (\$15,000.00), from the
22 Total Settlement Amount will be filed. Any portion of the requested Class
23 Counsel Award that is not awarded to Class Counsel shall be part of the Net
24 Settlement Amount and shall be distributed to Settlement Class Members as
25 provided in this Agreement. The Settlement Administrator shall allocate and
26 pay the Class Counsel Award to Class Counsel from the Total Settlement
27 Amount no later than five (5) calendar days after the Defendant deposits the
28 second installment of the Total Settlement Amount into the QSF. Class

Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiffs and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

4. PAGA Settlement. Fifteen Thousand Dollars (\$15,000) shall be allocated from the Total Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Settlement (\$711,250) to the California Labor and Workforce Development Agency no later than twenty-five (25) calendar days after the Defendant deposits the first installment of the Total Settlement Amount into the QSF (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement (\$3,750) will be distributed to the Aggrieved Employees as described in this Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of distributing the PAGA Settlement to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

5. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Total Settlement Amount. The estimate of the Settlement Administration Costs is \$14,000. The Settlement Administrator shall be paid the Settlement Administration Costs no later than twenty-five (25) calendar days after the Defendant deposits the second installment of the Total Settlement Amount into the QSF.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within

1 twenty-eight (28) days following the expiration of the Response Deadline, which
2 motion shall request final approval of the Settlement and a determination of the
3 amounts payable for the Class Representative Service Award, the Class Counsel
4 Award, the PAGA Settlement, and the Settlement Administration Costs.

5 1. Declaration by Settlement Administrator. No later than fourteen (14) days
6 after the Response Deadline, the Settlement Administrator shall submit a
7 declaration in support of Plaintiffs' motion for final approval of this
8 Settlement detailing the number of Notice Packets mailed and re-mailed to
9 Settlement Class Members, the number of undeliverable Notice Packets, the
10 number of timely requests for exclusion, the number of objections received,
11 the amount of the average Individual Settlement Payment and highest
12 Individual Settlement Payment, the Settlement Administration Costs, and any
13 other information as the Parties mutually agree or the Court orders the
14 Settlement Administrator to provide.

15 2. Final Approval Order and Judgment. Class Counsel shall present an Order
16 Granting Final Approval of Class Action Settlement to the Court for its
17 approval, and Judgment thereon, at the time Class Counsel files the Motion
18 for Final Approval.

19 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to
20 revoke the Settlement and Defendant shall have, in its sole discretion, the option to
21 terminate this Settlement if, after the Response Deadline, the number of Settlement
22 Class Members who submitted timely and valid written requests for exclusion from
23 the Settlement is at least ten percent (10%) of all Settlement Class Members. If
24 Defendant exercises the option to terminate this Settlement, Defendant shall: (a)
25 provide written notice to Class Counsel within five (5) calendar days after (i)
26 providing the Class Data to the Settlement Administrator or (ii) the Settlement
27 Administrator provides information regarding opt outs (which is to occur no later than
28 fourteen (14) calendar days after the Response Deadline, and (b) pay all Settlement

- 1 Administration Costs incurred up to the date or as a result of the termination; and the
2 Parties shall proceed in all respects as if this Agreement had not been executed.
- 3 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
4 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
5 Final Approval, including the Order Granting Final Approval of Class Action
6 Settlement, and Judgment before filing with the Court. The Parties and their counsel
7 will cooperate with each other and use their best efforts to affect the Court's approval
8 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
9 Judgment.
- 10 P. Cooperation. The Parties and their counsel will cooperate with each other and use
11 their best efforts to implement the Settlement.
- 12 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
13 except such proceedings necessary to implement and complete the Settlement, pending
14 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
- 15 R. Amendment or Modification. This Agreement may be amended or modified only by
16 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 17 S. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
18 Agreement among these Parties, and no oral or written representations, warranties or
19 inducements have been made to any Party concerning this Agreement or its Exhibit
20 other than the representations, warranties and covenants contained and memorialized
21 in this Agreement and its Exhibit.
- 22 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
23 represent they are expressly authorized by the Parties whom they represent to negotiate
24 this Agreement and to take all appropriate Action required or permitted to be taken by
25 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
26 documents required to effectuate the terms of this Agreement. The persons signing
27 this Agreement on behalf of Defendant represents and warrants that he/she is
28 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and

warrants that he is authorized to sign this Agreement and that he/she has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.

Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

AA. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendant, regardless of whether Class Counsel is currently aware of any facts or legal theories

upon which any claims or causes of action could be brought against Released Parties, including those facts or legal theories alleged in the operative complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

CC. No Admissions by the Parties. Plaintiff has claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: Feb 17, 2022

Oscar Almanza

Oscar Almanza (Feb 17, 2022 10:55 PST)

OSCAR ALMANZA

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: _____

XTREME XPRESS, INC.

Printed Name

Title

upon which any claims or causes of action could be brought against Released Parties, including those facts or legal theories alleged in the operative complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only.

CC. No Admissions by the Parties. Plaintiff has claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: _____

OSCAR ALMANZA

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED: 2/17/2022

DocuSigned by:
Celso Sapien
D1A2BE53E2744C4

XTREME XPRESS, INC.

Celso Sapien

Printed Name

President

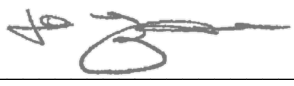
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IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: February 17, 2022

JCL LAW FIRM, A.P.C.

By:  _____

Attorneys for the Named Plaintiffs and the Plaintiff Class

DATED: February 17, 2022

ZAKAY LAW GROUP, APLC

By:  _____

Attorneys for the Named Plaintiff and the Class

DATED: _____

THE LAW OFFICE OF MANDEEP S. RUPAL

By: _____

Attorneys for Defendants

1 IT IS SO AGREED AS TO FORM BY COUNSEL:
2

3 DATED: _____

JCL LAW FIRM, A.P.C.

4 By: _____

5 Attorneys for the Named Plaintiffs and the Plaintiff
6 Class

7 DATED: _____

ZAKAY LAW GROUP, APLC

8 By: _____

9 Attorneys for the Named Plaintiff and the Class
10

11
12 DATED: 2/17/2022

THE LAW OFFICE OF MANDEEP S. RUPAL

13 By: Mandeep S. Rupal
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15 Attorneys for Defendants
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EXHIBIT B

Electronically Received 03/28/2022 01:27 PM



FILED
Superior Court of California
County of Los Angeles
03/30/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Fregoso Deputy

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

OSCAR ALMANZA, individually and on behalf of all persons similarly situated,	Case No. 20STCV15387
Plaintiffs,	Complaint Filed: August 21, 2020
vs.	[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
XTREME XPRESS, INC., a California corporation and DOES 1 through 50, Inclusive,	
Defendants.	Date: March 24, 2022 Time: 9:00 a.m. Judge: Elihu M. Berle Dept.: 6

This matter having come before the Superior Court of the State of California, in and for the County of Los Angeles, at 11:00 a.m. on March 24, 2022, with Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC, and Shani O. Zakay, Esq. of the Zakay Law Group, APLC, as counsel for Plaintiff OSCAR ALMANZA ("Plaintiff") and the attorneys from Rupal Law, appearing for defendant XTREME XPRESS, INC. ("Defendant"). The Court, having carefully considered the briefs, argument of counsel and all the matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

IT IS HEREBY ORDERED:

1. The Court preliminarily approves the First Amended Stipulation of Settlement of Class Action Claims and Release of Claims ("Settlement Agreement" or "Agreement") a true and correct copy of which is attached hereto as **Exhibit "1"**. This is based on the Court's determination that the Settlement Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

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

3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that Defendant shall pay is Four Hundred Sixty-Seven Thousand Three Hundred and Nine Dollars and Sixty Cents (\$467,309.60). It appears to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as to the entire Settlement Class when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues. It further appears that investigation and research have been conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and non-collusive arms-length negotiations.

4. The Court preliminarily finds that the Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Settlement Class are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

5. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Settlement Class:

“All of defendant XTREME XPRESS, INC.’s current and former non-exempt employees employed in California between April 21, 2016, and March 18, 2021 (“Class Period”). The Settlement Class excludes any person who submits a timely and valid request for exclusion.”

6. The Court concludes that, for settlement purposes only, the Settlement Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a)

the Settlement Class is ascertainable and so numerous that joinder of all members of the Settlement Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the Settlement Class with respect to the subject matter of the litigation; (c) the claims of the Class Representative are typical of the claims of the Settlement Class; (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class; (e) a class action is superior to other available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified to act as counsel for the Class Representative in their individual capacity and as the representative of the Settlement Class Members.

7. The Court provisionally appoints plaintiff OSCAR ALMANZA as the representative of the Settlement Class.

8. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm, A.P.C. and Shani Zakay of the Zakay Law Group, APLC, as Class Counsel for the Settlement Class.

9. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of Class and Representative Action Settlement (“Class Notice”) attached to the Agreement as **Exhibit “A”**. The Court finds that both notices appear to fully and accurately inform the Settlement Class and Aggrieved Employees of all material elements of the proposed Settlement, including right of any Settlement Class member to be excluded from the Settlement Class by submitting a written request for exclusion, and of each Settlement Class member’s right and opportunity to object to the Settlement. The Court further finds that the distribution of the notices substantially in the manner and form set forth in the Agreement and this Order meets the requirements of due process, is the most reasonable notice under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by first class mail, pursuant to the terms set forth in the Agreement.

10. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. No later than April 15, 2022, Defendant shall provide, to the Settlement Administrator the Class List, including information regarding Settlement Class Members that Defendant will in good faith compile from their records, including each Settlement Class Member’s full name; last known address; Social Security Number; dates of employment, and number of Workweeks accrued by each Settlement Class member during the Class Period and the PAGA Period. No later than April 29, 2022, the Settlement

1 Administrator shall mail the Class Notice to all identified, potential members of the Settlement Class
2 via first class U.S. Mail using the most current mailing address information available.

3 11. The Court hereby preliminarily approves the proposed procedure for exclusion from the
4 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
5 Settlement as provided in the Notice by following the instructions for requesting exclusion from the
6 Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be
7 postmarked or received by the Response Deadline of June 29, 2022, or in the case of a re-mailed Notice,
8 not more than fifteen (15) calendar days after the original Response Deadline. Any such person who
9 chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement
10 Payment under the Settlement and will not be bound by the Settlement, or have any right to object,
11 appeal or comment thereon. Settlement Class members who have not requested exclusion shall be bound
12 by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt
13 out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of
14 individuals is not permitted and will be deemed invalid.

15 12. Any Settlement Class member who has not opted out may appear at the final approval
16 hearing and may object or express the Member's views regarding the Settlement and may present
17 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and
18 determined by the Court as provided in the Notice. Settlement Class Members will have until June 29,
19 2022 to postmark their written objections to the Settlement Administrator.

20 13. The Agreement specifies for an award of Class Counsel Award for fees and expenses that
21 the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the
22 Class in this action, consisting of attorneys' fees not to exceed one-third of the Total Settlement Amount
23 currently estimated to be \$155,769.86 and costs and expenses not to exceed \$15,000.00.

24 14. The Agreement also specifies a proposed Class Representative Service Award to the Class
25 Representative, Oscar Almanza, in an amount not to exceed Ten Thousand Dollars (\$10,000.00).

26 15. While the Class Counsel Award and the Class Representative Service Award appear to be
27 within the range of reasonableness, the Court will not approve the Class Counsel Award or Class
28 Representative Service Award until the Final Approval Hearing

1 16. A final approval hearing shall be held before this Court on **July 28, 2022 at 9:00 AM** in
2 Department 6 of the Los Angeles County Superior Court to determine all necessary matters concerning
3 the Settlement, including: whether the proposed settlement of the Action on the terms and conditions
4 provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the
5 Court; whether an Order Granting Final Approval should be entered herein; whether the plan of
6 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
7 Settlement Class; and to finally approve the Class Counsel Award, Class Representative Service Award,
8 and the Settlement Administration Costs. All papers in support of the motion for final approval and the
9 motion for Attorneys' Fee and Costs and Class Representative Enhancement Award shall be filed with
10 the Court and served on all counsel no later than sixteen (16) court days before the hearing.

11 17. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder shall
12 be construed as a concession or admission by Defendant in any way, and shall not be used as evidence
13 of, or used against Defendant as, an admission or indication in any way, including with respect to any
14 claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth of any
15 allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
16 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor
17 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
18 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
19 limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability,
20 fault, wrongdoing, omission, concession or damage.

21 18. In the event the Settlement does not become effective in accordance with the terms of the
22 Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
23 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
24 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
25 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
26 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
27 Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

28 19. Pending final determination of whether the Settlement should be approved, Class

Representative and all members of the Settlement Class are barred and enjoined from filing, commencing, prosecuting, intervening in, instigating or in any way participating in the commencement or prosecution of any lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting any claims that are, or relate in any way to, the Class Representative's Released Claims or the Settlement Class' Released Claims, unless and until they submit a timely request for exclusion pursuant to the Agreement.

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

Dated: 3-30-22



Elihu M. Berle

JUDGE OF THE SUPERIOR COURT

Elihu M. Berle / Judge

EXHIBIT C

Tesla Stone

From: FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Friday, December 10, 2021 3:50 PM
To: Tesla Stone
Subject: Thank you for your Proposed Settlement Submission

12/10/2021 03:49:54 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D