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ATTORNEY FOR PLAINTIFF OSCAR ALMANZA

**SUPERIOR COURT OF CALIFORNIA
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

Complaint Filed: August 21, 2020

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

Date: July 20, 2021

Time: 9:00 a.m.

Judge: Elihu M. Berle

Dept.: 6

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

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

2. This declaration is being submitted in support of Plaintiff's motion for Preliminary Approval of Class Action Settlement.

I. EXHIBITS

3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint the Stipulation of Settlement of Class Action Claims and Release of Claims ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice.

4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class Counsel's compliance with California Labor Code Section 2699(1)(2).

II. INTRODUCTION

5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class. Given there are approximately 468 Settlement Class Members, and assuming 100% participation, the average gross

1 settlement recovery is approximately **\$325.74** (Net Settlement Amount divided by Settlement Class
2 Members)

3 6. As discussed below, the proposed Settlement satisfies all criteria for preliminary
4 settlement approval under California law and falls within the range of reasonableness. The average
5 Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour
6 class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification.
7 Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

8 **III. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation**

10 7. Defendant is a parcel delivery service that has been in the transportation industry for over
11 20 years, providing logistics and freight transportation services to its customers. Defendant's services
12 range from providing trucking and delivery services, messenger and courier services, fulfillment services
13 and warehousing throughout California.

14 8. Plaintiff worked for Defendant as an hourly, non-exempt parcel delivery driver between
15 November 2017 until November 2019. As a non-exempt parcel delivery driver employee, Plaintiff
16 regularly worked long hours delivering packages on behalf of Defendant's customers, like Amazon,
17 throughout Los Angeles County. Throughout his employment, Plaintiff was subject to Defendant's
18 written policies and procedures contained in, among other documents, Defendant's written Employee
19 Handbook.

20 9. Generally, Plaintiff claims that Defendant failed to pay him for all hours worked, failed to
21 provide complaint meal and rest periods, failed to reimburse mandatory business expenses, failed to
22 provide accurate itemized wage statements, and failed to pay all wages due at the time of his separation.
23 Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied
24 with all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
25 including but not limited to, facially complaint meal and rest period polices, written policies making the
26 use of personal cell phones optional.

27 10. On February 13, 2020, Plaintiff served Defendant and the Labor and Workforce
28 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA

1 Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of
2 the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of
3 his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code
4 Sections 2698 et seq (“PAGA”).

5 11. On April 21, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior
6 Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay
7 minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to
8 pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide
9 required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide
10 required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to
11 reimburse employees for required business expenses in violation of California Labor Code sections
12 2802; (7) failure to provide accurate itemized wage statements in violation of California Labor Code
13 section 226; (8) failure to provide wages when due in violation of California Labor Code sections 201,
14 202 and 203; and (9) violations of the California Labor Code Private Attorney General Act (“PAGA”).
15 Thereafter, Defendant answered the First Amended Complaint.

16 12. Plaintiff commenced written discovery in June 2020. Prior to answering Plaintiff’s written
17 discovery, the Parties agreed to mediate this action. In anticipation of mediation, the Parties stipulated
18 to stay formal discovery. To prepare for mediation, the Parties agreed to informally produce certain
19 documents and data points subject to the mediation privilege, including but not limited to, a sample of
20 the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained the Berger
21 Consulting Group, to analyze Defendant’s time and payroll data.

22 13. On December 9, 2020, the Parties participated in a full day mediation with (Ret.) Hon.
23 William Pate. After arms-length negotiations and bargaining, the parties reached an agreement to settle
24 and signed a Memorandum of Understanding. After reaching an agreement in principle, the parties
25 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

26 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

27 14. In December 2019, Class Counsel began its pre-filing investigation into Plaintiff’s
28 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part

1 of the interview process, Plaintiff produced nearly 100 pages of documents related to his employment
2 for Defendant, including portions of Defendant's handbooks, compensation policies and time and payroll
3 records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints
4 justified further inquiry.

5 15. Class Counsel subsequently requested Plaintiff's employee file from Defendant. In
6 response, Defendant produced hundreds of pages of documents, including but not limited, a copies of
7 Plaintiff's hiring documents, payroll and time records, performance reviews and separation documents.
8 Class Counsel reviewed and analyzed the documents and determined the documents substantiated
9 Plaintiff's claim that Defendant's failed to, among other things, provide complaint meal and rest periods.
10 Shortly thereafter, Class Counsel summarized the known factual and legal issues in the PAGA Notice
11 addressed to the LWDA. Several weeks later, Class Counsel filed this class action.

12 16. Additionally, during the meetings with Class Counsel, Plaintiff provided the names and
13 contact information for several members of the Settlement Class. After filing this action, Class Counsel
14 interviewed those members of the Settlement Class to further investigate Plaintiff's allegations and those
15 made on behalf of the Settlement Class.

16 17. After the initial Case Management Conference, Plaintiff propounded written discovery.
17 Prior to answering Plaintiff's written discovery, the Parties agreed to mediate the action. To prepare for
18 mediation, Class Counsel requested several documents and data points to further evaluate Plaintiff's
19 claims and Defendant's liability exposure to the Settlement Class members. In response to Class
20 Counsel's request, Defendant produced the time and payroll records for approximately 10% of the
21 Settlement Class members, aggregate workweek and pay period data for 100% of the Settlement Class,
22 and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal and rest
23 period policies. In total, Defendant produced approximately 2,200 pages containing nearly one-half
24 million unique cells of time and payroll data for Class Counsel to analyze. In addition to formal and
25 informal discovery, witness interview, document review, data analysis and legal research, Class Counsel
26 also researched similar wage and hour actions. Although no two cases are identical, this research
27 provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this
28 settlement against. The investigation allowed to Class Counsel to realistically assess the value of

1 Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in
2 the proposed settlement now before the Court.

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

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

15 20. In advance of mediation, Class Counsel created several damage models predicated on
16 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while
17 accounting for the uncertainties of continued litigation. These damage models informed and guided
18 Class Counsel during the mediated settlement discussions.

19 21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
20 determining Plaintiff's suitability as a putative class representative through interviews, background
21 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
22 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
23 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
24 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
25 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
26 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief and (9)
27 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
28

1 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
2 independent assessment of the reasonableness of the terms to which the parties have agreed.

3 **C. The Parties Settled at Mediation**

4 22. On March 18, 2021, the Parties conducted a full day of mediation with (Ret.) William
5 Pate, a highly regarded mediator, and former San Diego County Superior Court Judge. Hon. Pate helped
6 to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
7 sides. The Parties made substantial progress with Judge Pate's assistance. Namely, the parties exchanged
8 information regarding their respective claims and defense, including their respective evaluation of the
9 damages. After nearly eight hours arm's length and adversarial negotiations, the mediation nearly
10 concluded without a settlement. However, at the conclusion of the mediation, Judge Pate issued a
11 proposal for settlement that the Parties accepted. The complete and final terms of the Parties' settlement
12 are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair,
13 adequate, and reasonable compromise of the claims at issue.

14 23. At all times, the Parties' negotiations were at an arm's length, adversarial and non-
15 collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the
16 mediation session nearly concluded without a settlement. The matter resolved only when Judge Denton
17 issued a mediator's proposal that the Parties accepted. Judge Denton only arrived at his proposal after
18 hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses.

19 24. Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted
20 negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's
21 length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
22 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair,
23 adequate and represent a reasonable compromise of the claims at issue.

24 **IV. ARGUMENT**

25 **A. The Court Should Preliminarily Approve the Settlement**

26 25. The Total Settlement Amount of \$300,000 is fair and reasonable considering the nature
27 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
28 mediation, Class Counsel retained BCG to develop varied economic damages models measuring

1 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
2 models were informed by Class Counsel's investigation, including the analysis of a significant sample
3 of time and payroll data. Class Counsel projected Defendant's liability exposure for the Settlement Class
4 ranged between approximately \$595,000 ("Conservative Model") and \$2.2 million ("Aggressive
5 Model") if successful at trial. This range reflects the uncertainty regarding several of Plaintiff's claims,
6 together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting
7 time penalties resulting from meal and rest period violations. Thus, the Total Settlement Amount of
8 \$300,000 represents approximately between 13% and 50% of Defendant's liability exposure as estimated
9 by Class Counsel at the time of mediation. Class Counsel only agreed to enter the Settlement following
10 his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts,
11 applicable law, and marketplace for similar settlements, and in light of the risk of significant delay,
12 uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel
13 firmly believes this Agreement to be in the best interests of Settlement Class. Because the Settlement's
14 terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

15 (1) Estimated Damages for Meal Period Violations

16 26. Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically,
17 Plaintiff alleges that because of their rigorous work schedules delivery upwards of 200 packages during
18 a single eight-hour shift, Plaintiff and the Settlement Class Members, regularly worked through what
19 should have been off-the-clock and duty-free meal periods without compensation. Consequently,
20 Plaintiff alleges that he is owed meal period premiums and compensation for the off-the-clock work
21 performed during what should have been his duty-free meal periods.

22 27. Defendant argued that they fully complied with California meal period laws and maintained
23 legally compliant policies and practices. Courts have found that where an employer's meal period policies
24 are compliant, individualized issues exist as to the reasons for missed, late or truncated meal periods. *See e.g.*
25 *Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only
26 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not
27 certifiable because individualized issues existed as to the reasons for the late meal periods). JCL Dec., ¶ XX.
28

1 28. Further, Defendant argued that many of the Settlement Class members executed valid On-
2 Duty Meal Period Waivers. Again, if successful, Defendant availed itself to a complete defense of
3 Plaintiff's meal period claim. Plaintiff estimated the range of outcomes for this claim ranged between \$0
4 and approximately \$292,910.

5 (2) Estimated Damages for Rest Period Violations

6 29. Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
7 Plaintiff alleged that as a result of their rigorous work schedule they were not able to take timely and duty-
8 free rest periods. Again, Defendant denied liability and asserted that they maintained legally compliant rest
9 period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
10 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on
11 Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely
12 would have argued that only a small number of Class Members missed their rest breaks. Certification likely
13 would have required depositions of Class Members who provided declarations, and Defendant surely would
14 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
15 waived. Plaintiff's own evidence confirms that the written policy does not generate uniform practices."").
16 Accordingly, the rest break claim was heavily discounted in Plaintiff's valuation of the case. this claim and
17 ranged between \$0 and \$282,000.

18 (3) Defendant's Estimated Exposure for Unreimbursed Business Expenses

19 30. Plaintiff alleged that Defendant required the Settlement Class Members to use their
20 personal cell phone to obtain and view work schedules and remain in communication with dispatch
21 during their work shifts. Again, Defendant vigorously denied any liability for this claim. Defendant
22 argued that any cell phone use was voluntary, never mandatory, and contrary to written policies.
23 Defendant argued that it provided Plaintiff and the Settlement Class Members with company phones to
24 use during their shifts making the use of personal phones strictly voluntary. Further, Defendant offered
25 evidence that work schedules were regularly posted at the company vehicle yard where copies were
26 made available their employees to take home. This claim was also heavily discounted based on
27 Defendant's defenses. Plaintiff estimated Defendant's exposure for this claim ranged between \$0 and
28 \$125,000.

(4) Exposure for Underpaid Overtime

31. Plaintiff alleged that during portions of the Class Period, Defendant failed to pay Plaintiff and the Class Members for all overtime hours worked more than 8 hours in a single work shift. More specifically, Plaintiff alleged that during portions of the Class Period, Defendant only paid daily overtime if Plaintiff or a Class Member worked more than ten (10) hours in a single shift rather than eight (8), in violation of California law. Defendant denied Plaintiff's allegations and argued that it properly implemented an AWS during the portion of the Class Period at issue. For the majority of the Class Period, Defendant argued that it maintained fully compliant overtime policies and practices. Although, Plaintiff believed strongly that it could establish liability for this claim, the estimated damages remained relatively modest. Plaintiff's consultant estimated Defendant's exposure for the unpaid overtime claim at approximately \$145,000.

(5) Exposure for Wage Statement Violations

32. Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Cal. Lab. Code § 226. Defendant could also argue that that meal and rest period violations do not entitle employees like Plaintiff and the Settlement Class Members to pursue the derivative waiting time and itemized wage statement penalties.

33. Although the Settlement Class arguably could have seen a payout of nearly \$1.1 million for these penalties if Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties.

34. Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks.

(6) Defendant's PAGA Exposure

35. Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure at approximately \$350,000.

36. Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the employment practices complied with all applicable Labor Laws. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested.

B. Risks of Continued Litigation

37. Although Plaintiff and Class Counsel are confident about the strength of the claims, collectively they recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of Plaintiff's lawsuit. These risks include not being able to certify the action, the fast-changing landscape of wage and hour law, decertification, and a reversal after an appeal. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

38. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment.

39. In this matter, Class Counsel negotiated a Total Settlement Amount of \$300,000 that is roughly between 13% and 50% Defendants' maximum liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

C. Proposed Notice Informs the Class About the Case and Settlement

1 40. The Parties jointly drafted the Class Notice which fairly and neutrally informs the
2 Settlement Class of their rights and remedies in this action. The Settlement Administrator will first verify
3 addresses, then mail the proposed Class Notice to entire Settlement Class. The Notice will include
4 information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms,
5 the class definition, the procedure and time period within which to requests for exclusions or objections
6 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
7 payments, and the terms and scope of the Released Claims. This method was negotiated by the Parties
8 to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost
9 effective administration of the Settlement.

10 41. As detailed in the Agreement, the method of disseminating the proposed Class Notice and
11 contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

12 **D. The Court Should Preliminarily Approve the Enhancement Award**

13 42. Approximately 468 members of the Settlement Class will share in the estimated \$152,450
14 Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval,
15 therefore, the Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff.
16 The service award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting
17 Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status
18 of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure
19 that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide
20 Defendants a general release of all claims arising out of their employment.

21 43. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
22 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
23 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class
24 Representative Service Award.

25 **E. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

26 44. Class Counsel took this matter on a contingency fee basis and invested significant time
27 and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
28 Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class

Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$15,000. Agreement at §III(M)(3). In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable.

45. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

F. The Court Should Provisionally Certify the Settlement Class

46. For the purpose of Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Settlement Class is appropriate. It is my opinion that provisional certification is appropriate here, and that the Settlement is fair, reasonable, and adequate, and in the best interests of the Class.

47. Generally, the proposed Settlement Class consists of all of Defendants' current and former California employees during the Class Period. Defendants' records show that the Settlement Class Members consists of approximately 468 individuals, making joinder of all Settlement Class Members impracticable. Further, because all Settlement Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records.

48. The California statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

49. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that they were injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to

1 advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive class
2 discovery, and evaluating the proposed settlement to assure that it is fair.

3 50. A class action is superior to a multitude of individual lawsuits. Given the size and amount
4 of each individual Settlement Class Member's claim, Class Settlement Members likely have little
5 incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal
6 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment
7 is superior to individual, case-by-case adjudication.

8 **F. Class Counsel's Experience**

9 51. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by
10 competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC
11 ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers
12 throughout California in wage and hour class actions, PAGA Actions and complex multi-party product
13 liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner),
14 Tesla Stone (Paralegal), Leilani Edmunds (Legal Secretary), Amanda De Blouw (Legal Assistant).

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

21 53. I have represented consumers and employees in California class actions, and complex
22 multi-party product liability actions exclusively for more than 13 years. I have been in practice as a
23 plaintiffs' civil litigation attorney since April 2007.

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

- 26 a. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
27 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
28 settlement for, *inter alia*, unpaid off the clock work. 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.)

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

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

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

e. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

f. *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.)

g. *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.)

h. *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.)

i. *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.)

j. *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.)

k. *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.)

l. *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.)

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

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

- o. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- p. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- q. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- r. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- s. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- t. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- u. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- v. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- w. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

x. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

55. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$50 million on behalf of the Firm's clients.

56. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

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

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

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of June 2021, at San Diego, California

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade
Attorneys for Plaintiff

EXHIBIT 1

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 5850 OBERLIN DRIVE, SUITE 230A
10 SAN DIEGO, CA 92121
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

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

19
20 **SUPERIOR COURT OF CALIFORNIA**

21 **COUNTY OF LOS ANGELES**

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

24 Plaintiffs,

25 vs.

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

Defendants.

Case No. 20STCV15387

[Action Filed 04/21/2020]

**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 \$100,000 out of \$300,000 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).

- 1 F. "Class Data" means information regarding Settlement Class Members that Defendant
2 will in good faith compile from its records and provide to the Settlement
3 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall
4 include: each Settlement Class Member's full name; last known address; Social
5 Security Number; start dates and end dates of employment, and number of
6 Workweeks as a Settlement Class Member during the Class Period and PAGA Period
7 and email address, if known.
8
- 9 G. "Class Period" means the period from April 21 2016 and March 18, 2021.
10
- 11 H. "Class Representative Service Award" means the amount that the Court authorizes to
12 be paid to the Class Representative, in addition to her Individual Settlement Payment
13 and his pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
14 in assisting with the prosecution of the Action and in exchange for executing a
15 General Release of Defendant.
16
- 17 I. "Class Representative" means Plaintiff OSCAR ALMANZA.
18
- 19 J. "Court" means the Superior Court for the State of California, County of San Diego
20
- 21 K. "Defendant" shall mean XTREME XPRESS, INC., a California corporation.
22
- 23 L. "Effective Date" means the earliest date, following entry by the Court of an order
24 and judgment finally approving this Settlement, upon which one of the following have
25 occurred: (i) if no objection is filed to the settlement and no objector appears at the
26 hearing on final approval, the date of the Court's entry of the order granting final
27 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
28

1 hearing on final approval, then the earlier of the following: (a) the expiration of all
2 potential appeal periods without a filing of a notice of appeal of the final approval
3 order or judgment; (b) final affirmance of the final approval order and judgment by
4 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
5 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
6 the final approval order and judgment is no longer subject to further judicial review.
7

8 M. “Funding Date” shall mean the later of (i) March 18, 2022 or (ii) ten (10) calendar
9 days after the Effective Date and is the date Defendant transfers the Total Settlement
10 Amount into the QSF in accord with the terms of this Agreement.
11

12 N. “Individual Settlement Payment” means the amount payable from the Net Settlement
13 Amount to each Settlement Class Member and excludes any amounts distributed to
14 Settlement Class Members pursuant to PAGA
15

16 O. “Net Settlement Amount” or “NSA” means the Total Settlement Amount, less Class
17 Counsel Award, Class Representative Service Award, PAGA Settlement, and
18 Settlement Administration Costs.
19

20 P. “Notice Packet” means the Class Notice to be provided to the Settlement Class
21 Members by the Settlement Administrator in the form set forth as Exhibit A to this
22 Agreement (other than formatting changes to facilitate printing by the Settlement
23 Administrator).
24

25 Q. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
26 Labor Code § 2698 *et seq.*
27
28

- 1 R. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
2 for each Aggrieved Employee divided by the sum total of the Workweeks for all
3 Aggrieved Employees during the PAGA Period.
4
- 5 S. "PAGA Period" means the period between February 13, 2019 and March 18, 2021.
6
- 7 T. "PAGA Settlement" shall mean Ten Thousand Dollars (\$10,000.00) to be allocated
8 from the Total Settlement Amount.
9
- 10 U. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
11 Plaintiff or Defendant, individually.
- 12 V. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
13 divided by the sum total Workweeks for all Settlement Class Members.
14
- 15 W. "Plaintiff" shall mean OSCAR ALMANZA.
16
- 17 X. "QSF" means the Qualified Settlement Fund established, designated and maintained
18 by the Settlement Administrator to fund the Total Settlement Amount.
19
- 20 Y. "Released Claims" means all class claims alleged in the operative complaint which
21 occurred during the Class Period, and expressly excluding all other claims, including
22 claims for vested benefits, wrongful termination, unemployment insurance, disability,
23 social security, workers' compensation, and class claims outside of the Class Period.
24
- 25 Z. "Released PAGA Claims" mean any and all PAGA Claims alleged in the operative
26 complaint and Plaintiff's notice to the LWDA which occurred during the PAGA
27 Period, and expressly excluding all other claims, including claims for vested benefits,
28

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.

1 FF. "Total Settlement Amount" means Three Hundred Thousand Dollars (\$300,000.00)
2 that Defendant must pay into the QSF in connection with this Settlement, inclusive of
3 the sum of the Individual Settlement Payments, the Class Representative Service
4 Payment Awards, the Class Counsel Award, PAGA Settlement and the Settlement
5 Administration Costs and *exclusive* of the employer's share of payroll tax, if any,
6 triggered by any payment under this Settlement.
7

8 GG. "Workweeks", for purposes of calculating the distribution of the Net Settlement
9 Amount, means the number of weeks of employment during the Class Period that
10 each Settlement Class Member worked while paid on a draw. The Settlement
11 Administrator will calculate the number of Workweeks by calculating the number of
12 days each Settlement Class Member was employed during the Class Period, dividing
13 by seven (7), and rounding up to the nearest whole number. For purpose of
14 determining the Individual Settlement Payments and Payment Ratio, each Settlement
15 Class Member who is a former employee no longer working for Defendant will be
16 assigned four (4) additional Workweeks. For purposes of distributing the PAGA
17 Settlement to the Settlement Class, Workweeks means the number of weeks of
18 employment for each Settlement Class Member during the PAGA Period.
19
20

21
22 **II. RECITALS**

- 23 A. On February 13, 2020, Plaintiff filed a Notice of Violations with the Labor and
24 Workforce Development Agency (LWDA) and served the same on Defendant.
25
26 B. On April 21, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior
27 Court for:
28

1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200;
2. failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*;
4. failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512;
5. failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512;
6. failure to reimburse employees for required business expenses in violation of California Labor Code section 2802;
7. failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and
8. failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203.
9. Violations of the Private Attorney General Act (“PAGA”) Labor Code §§ 2698 *et seq.*

C. On March 18, 2021, the Parties participated in mediation presided over by the Honorable Judge William Pate (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle

1 the Action based on a mediator's proposal which was memorialized in the form of a
2 Memorandum of Understanding.

3
4 D. This Agreement replaces and supersedes the Memorandum of Understanding and any
5 other agreements, understandings, or representations between the Parties. This
6 Agreement represents a compromise and settlement of highly disputed claims.
7 Nothing in this Agreement is intended or will be construed as an admission by
8 Defendant that the claims in the Action of Plaintiff or the Settlement Class Members
9 have merit or that Defendant bears any liability to Plaintiff or the Class on those
10 claims or any other claims, or as an admission by Plaintiff that Defendant's defenses
11 in the Action have merit. The Parties agree to certification of the Class for purposes
12 of this Settlement only. If for any reason the settlement does not become effective,
13 Defendant reserves the right to contest certification of any class for any reason and
14 reserves all available defenses to the claims in the Action.
15

16
17 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

18
19 **III. TERMS OF AGREEMENT**

20 A. Settlement Consideration and Settlement Payments by Defendant.

21 1. Settlement Consideration. In full and complete settlement of the Action, and
22 in exchange for the releases set forth below, Defendant will pay the sum of
23 the Individual Settlement Payments, the Class Representative Service Award,
24 the Class Counsel Award, PAGA Settlement, and the Settlement
25 Administration Costs, as specified in this Agreement, equal to the Total
26 Settlement Amount of Three Hundred Thousand Dollars (\$300,000.00). The
27
28

1 Parties agree that this is a non-reversionary Settlement and that no portion of
2 the Total Settlement Amount shall revert to Defendant. Other than the
3 Defendant's share of employer payroll taxes, or as otherwise specified in the
4 Agreement, Defendant shall not be required to pay more or less than the Total
5 Settlement Amount, except as provided for hereinbelow.

6
7 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
8 Class was comprised of 468 individuals that collectively worked
9 approximately 10,600 Workweeks ("Projected Workweeks") during the Class
10 Period. In regard hereto, Defendant will provide a declaration under penalty
11 of perjury confirming the number of Class Members and Workweeks they
12 worked during the Class Period prior to the filing of the motion for preliminary
13 approval. If, at the time of Defendant's declaration, the actual number of
14 Workweeks is 5% higher than the Projected Workweeks (i.e., greater than
15 11,130), the Gross Settlement Amount shall increase proportionally with each
16 added workweek at a rate of \$28.30.

17
18
19 3. Settlement Payment. Defendant and the Released Parties, and each of them,
20 are jointly and severally liable for payment of the Total Settlement Amount.
21 Defendant shall pay, via wire transfer, the Total Settlement Amount to the
22 Settlement Administrator on the Funding Date:
23

24 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
25 payroll taxes is in addition to the Total Settlement Amount and shall be paid
26 by Defendant within ten (10) calendar days of request by the Settlement
27 Administrator.
28

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

1 Protection Act, California Business & Professions Code Section 17200 et seq., and
2 any and all claims arising under any federal, state or other governmental statute, law,
3 regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
4 rights or benefits that they may have under California Civil Code § 1542, which
5 provides as follows:
6

7 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
8 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
9 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
10 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
11 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
12 ***DEBTOR OR RELEASED PARTY.***
13

14
15 Plaintiff is a creditor and/or “releasing party” within the meaning of Civil Code §
16 1542. Plaintiff may discover claims or facts in addition to, or different from, those
17 which he now knows or believes to exist, but Plaintiff expressly agrees to fully,
18 finally and forever settle and release any and all claims against the Released Parties,
19 known or unknown, suspected or unsuspected, which exist or may exist on behalf of
20 or against the other at the time of execution of this Agreement, including, but not
21 limited to, any and all claims relating to or arising from Plaintiff’s employment with
22 Defendant. The Parties further acknowledge, understand, and agree that this
23 representation and commitment is essential to the Agreement and that this
24 Agreement would not have been entered into were it not for this representation and
25 commitment.
26
27
28

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

- 3
- 4 1. The Court enters an order granting preliminary approval of the Settlement;
- 5
- 6 2. The Court enters an order granting final approval of the Settlement and a Final
7 Judgment;
- 8
- 9 3. If an objector appears at the final approval hearing, the time for appeal of the
10 Final Judgment and Order Granting Final Approval of Class Action
11 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
12 any appeal from the Judgment and Order Granting Final Approval of Class
13 Action Settlement; and
- 14
- 15 4. Defendant fully funds the Total Settlement Amount.

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

- 20
- 21 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
22 and shall not be admissible in any judicial, administrative or arbitral
23 proceeding for any purpose or with respect to any issue, substantive or
24 procedural;
- 25
- 26 2. The conditional class certification (obtained for any purpose) shall be void *ab*
27 *initio* and of no force or effect, and shall not be admissible in any judicial,
28

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and
3

4 3. None of the Parties to this Settlement will be deemed to have waived any
5 claims, objections, defenses or arguments in the Action, including with respect
6 to the issue of class certification.
7

8 G. Certification of the Settlement Class. The Parties stipulate to conditional class
9 certification of the Settlement Class for the Class Period for purposes of settlement
10 only. In the event that this Settlement is not approved by the Court, fails to become
11 effective, or is reversed, withdrawn or modified by the Court, or in any way prevents
12 or prohibits Defendant from obtaining a complete resolution of the Released Claims,
13 the conditional class certification (obtained for any purpose) shall be void *ab initio* and
14 of no force or effect, and shall not be admissible in any judicial, administrative or
15 arbitral proceeding for any purpose or with respect to any issue, substantive or
16 procedural.
17

18 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
19 effect of the payments called for, and Settlement Class Members are not relying on
20 any statement or representation by the Parties in this regard. Settlement Class
21 Members understand and agree that they will be responsible for the payment of any
22 taxes and penalties assessed on the Individual Settlement Payments described and will
23 be solely responsible for any penalties or other obligations resulting from their
24 personal tax reporting of Individual Settlement Payments.
25
26
27
28

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

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

26 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
27 establishing and administering the QSF; calculating, processing and mailing payments
28

1 to the Class Representatives, Class Counsel, LWDA and Settlement Class Members;
2 printing, mailing and emailing the Notice Packets to the Settlement Class Members as
3 directed by the Court; establishing and maintaining the a landing page hosted on its
4 website to containing information about the Settlement; receiving and reporting the
5 objections and requests for exclusion; calculating, deducting and remitting all legally
6 required taxes from Individual Settlement Payments and distributing tax forms for the
7 Wage Portion and Non-Wage Portion of the Individual Settlement Payments;
8 processing and mailing tax payments to the appropriate state and federal taxing
9 authorities; providing declaration(s) as necessary in support of preliminary and/or final
10 approval of this Settlement; posting notice of entry of judgment on its website; and
11 other tasks as the Parties mutually agree or the Court orders the Settlement
12 Administrator to perform. The Settlement Administrator shall keep the Parties timely
13 apprised of the performance of all Settlement Administrator responsibilities by among
14 other things, sending a weekly status report to the Parties' counsel stating the date of
15 the mailing, the of number of Elections Not to Participate in Settlement it receives
16 (including the numbers of valid and deficient), and number of objections received.
17
18
19

20 L. Notice Procedure.

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

- 27
28 2. Notice Packets.

1 a) The Notice Packet shall contain the Notice of Class Action Settlement
2 in a form substantially similar to the form attached as Exhibit A. The
3 Notice of Class Action Settlement shall inform Settlement Class
4 Members that they need not do anything in order to receive an
5 Individual Settlement Payment and to keep the Settlement
6 Administrator apprised of their current mailing address, to which the
7 Individual Settlement Payments will be mailed following the Funding
8 Date. The Notice of Class Action Settlement shall set forth the release
9 to be given by all members of the Settlement Class who do not request
10 to be excluded from the Settlement Class in exchange for an Individual
11 Settlement Payment, the number of Workweeks worked by each
12 Settlement Class Member during the Class Period, and the estimated
13 amount of their Individual Settlement Payment if they do not request
14 to be excluded from the Settlement. The Settlement Administrator
15 shall use the Class Data to determine Class Members' Workweeks.

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

24
25
26 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
27 the Settlement Administrator will perform a search based on the National
28

1 Change of Address Database to update and correct any known or identifiable
2 address changes. No later than fourteen (14) calendar days after receiving the
3 Class Data from Defendant, the Settlement Administrator shall mail and email
4 copies of the Notice Packet to all Settlement Class Members via regular First-
5 Class U.S. Mail and electronic mail. The Settlement Administrator shall
6 exercise its best judgment to determine the current mailing address for each
7 Settlement Class Member. The address identified by the Settlement
8 Administrator as the current mailing address shall be presumed to be the best
9 mailing address for each Settlement Class Member.
10

- 11
- 12 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
13 Administrator as non-delivered on or before the Response Deadline shall be
14 re-mailed to any forwarding address provided. If no forwarding address is
15 provided, the Settlement Administrator shall promptly attempt to determine a
16 correct address by lawful use of skip-tracing, or other search using the name,
17 address and/or Social Security number of the Settlement Class Member
18 involved, and shall then perform a re-mailing, if another mailing address is
19 identified by the Settlement Administrator. In addition, if any Notice Packets,
20 which are addressed to Settlement Class Members who are currently
21 employed by Defendant, are returned to the Settlement Administrator as non-
22 delivered and no forwarding address is provided, the Settlement Administrator
23 shall notify Defendant. Defendant will request that the currently employed
24 Settlement Class Member provide a corrected address, and transmit to the
25 Administrator any corrected address provided by the Settlement Class
26 Member. Settlement Class Members who received a re-mailed Notice Packet
27
28

1 shall have their Response Deadline extended fifteen (15) days from the
2 original Response Deadline.

3
4 5. Disputes Regarding Individual Settlement Payments. Settlement Class
5 Members will have the opportunity, should they disagree with Defendant's
6 records regarding the start and end dates of employment while paid on a draw,
7 as stated on their Employment Information Sheet, to provide documentation
8 and/or an explanation to show contrary dates. If there is a dispute, the
9 Settlement Administrator will consult with the Parties to determine whether
10 an adjustment is warranted. The Settlement Administrator shall determine the
11 eligibility for, and the amounts of, any Individual Settlement Payments under
12 the terms of this Agreement. The Settlement Administrator's determination
13 of the eligibility for and amount of any Individual Settlement Payment shall
14 be binding upon the Settlement Class Member and the Parties.
15

16
17 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
18 by the Settlement Administrator concerning the administration of the
19 Settlement will be resolved by the Court under the laws of the State of
20 California. Before any such involvement of the Court, counsel for the Parties
21 will confer in good faith to resolve the disputes without the necessity of
22 involving the Court.
23

24 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
25 Packet shall state that Settlement Class Members who wish to exclude
26 themselves from the Settlement must submit a written request for exclusion
27 by the Response Deadline. The written request for exclusion must state that
28

1 the Settlement Class Member wishes to exclude himself or herself from the
2 Settlement and (1) must contain the name, address, and the last four digits of
3 the Social Security number of the person requesting exclusion; (2) must be
4 signed by the Settlement Class Member; (3) must be postmarked or fax
5 stamped by the Response Deadline and returned to the Settlement
6 Administrator at the specified address or fax telephone number; and (4)
7 contain a typewritten or handwritten notice stating in substance: "I wish to
8 opt out of the settlement of the class action lawsuit entitled *Almanza v. Xtreme*
9 *Xpress.*, currently pending in the Superior Court for the County of Los
10 Angeles, Case No. 20STCV15387. I understand that by requesting to be
11 excluded from the settlement, I will receive no money from the Settlement
12 described in this Notice." The request for exclusion will not be valid if it is
13 not timely submitted, if it is not signed by the Settlement Class Member, or if
14 it does not contain the name and address and last four digits of the Social
15 Security number of the Settlement Class Member. The date of the postmark
16 on the mailing envelope or fax stamp on the request for exclusion shall be the
17 exclusive means used to determine whether the request for exclusion was
18 timely submitted. Any Settlement Class Member who requests to be excluded
19 from the Settlement Class will not be entitled to an Individual Settlement
20 Payment and will not be otherwise bound by the terms of the Settlement or
21 have any right to object, appeal or comment thereon. However, any
22 Settlement Class Member that submits a timely request for exclusion that is
23 also a member of the Aggrieved Employees will still receive their pro rata
24 share of the PAGA Settlement, as specified below, and in consideration, will
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1 be bound by the Release by the Aggrieved Employees as set forth herein.
2 Settlement Class Members who fail to submit a valid and timely written
3 request for exclusion on or before the Response Deadline shall be bound by
4 all terms of the Settlement and any final judgment entered in this Action if the
5 Settlement is approved by the Court. No later than fourteen (14) calendar days
6 after the Response Deadline, the Settlement Administrator shall provide
7 counsel for the Parties with a final list of the Settlement Class Members who
8 have timely submitted written requests for exclusion. At no time shall any of
9 the Parties or their counsel seek to solicit or otherwise encourage members of
10 the Settlement Class to submit requests for exclusion from the Settlement.
11

- 12
- 13 8. Objections. The Notice of Class Action Settlement contained in the Notice
14 Packet shall state that Settlement Class Members who wish to object to the
15 Settlement must mail to the Settlement Administrator a written statement of
16 objection (“Notice of Objection”) by the Response Deadline. The postmark
17 date of mailing shall be deemed the exclusive means for determining that a
18 Notice of Objection was served timely. The Notice of Objection must be
19 signed by the Settlement Class Member and state: (1) the case name and
20 number; (2) the name of the Settlement Class Member; (3) the address of the
21 Settlement Class Member; (4) the last four digits of the Settlement Class
22 Member’s Social Security number; (4) the basis for the objection; and (5) if
23 the Settlement Class Member intends to appear at the Final
24 Approval/Settlement Fairness Hearing. Settlement Class Members who fail
25 to make objections in writing in the manner specified above may make their
26 objections orally at the Final Approval/Settlement Fairness Hearing with the
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28

1 Court's permission. Settlement Class Members will have a right to appear at
2 the Final Approval/Settlement Fairness Hearing in order to have their
3 objections heard by the Court. At no time shall any of the Parties or their
4 counsel seek to solicit or otherwise encourage Settlement Class Members to
5 file or serve written objections to the Settlement or appeal from the Order and
6 Final Judgment. Settlement Class Members who submit a written request for
7 exclusion may not object to the Settlement.
8

9
10 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
11 the Total Settlement Amount on or before the Funding Date, plus any employer's share
12 of payroll taxes as mandated by law within the time specified herein.

13
14 1. Individual Settlement Payments. Individual Settlement Payments shall be
15 paid from the Net Settlement Amount and shall be paid pursuant to the
16 formula set forth below.

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

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

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

8 Using the Class Data, the Settlement Administrator shall add up the
9 total number of Workweeks for all Aggrieved Employees during the
10 PAGA Period. The respective Workweeks for each Aggrieved
11 Employee will be divided by the total Workweeks for all Aggrieved
12 Employees, resulting in the “PAGA Payment Ratio” for each
13 Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment
14 Ratio will then be multiplied by the Aggrieved Employee Payment to
15 calculate each Aggrieved Employee’s estimated Individual PAGA
16 Settlement.
17
18

19 c) Allocation of Individual Settlement Payments. For tax purposes,
20 Individual Settlement Payments shall be allocated and treated as
21 follows: 25% as wages (“Wage Portion”); 75% as penalties and
22 interest (“Non-Wage Portion”). The Wage Portion is subject to wage
23 withholdings and shall be reported on IRS Form W-2. The Non-Wage
24 Portion shall not be subject to wage withholdings and shall be reported
25 on IRS Form 1099.
26
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- 1 d) Allocation of Aggrieved Employee Payments. For tax purposes,
2 Aggrieved Employee Settlement Payments shall be allocated and
3 treated as 100% penalties and shall be reported on IRS Form 1099.
4
- 5 e) Mailing. Individual Settlement Payments and Aggrieved Employee
6 Payments shall be mailed by regular First-Class U.S. Mail to
7 Settlement Class Members' last known mailing address no later than
8 fifteen (15) calendar days after the Funding Date.
9
- 10 f) Expiration. Any checks issued to Settlement Class Members shall
11 remain valid and negotiable for one hundred and eighty (180) days
12 from the date of their issuance. If a Settlement Class Member does not
13 cash his or her settlement check within 90 days, the Settlement
14 Administrator will send a letter to such persons, advising that the
15 check will expire after the 180th day, and invite that Settlement Class
16 Member to request reissuance in the event the check was destroyed,
17 lost or misplaced. In the event an Individual Settlement Payment
18 check has not been cashed within one hundred and eighty (180) days,
19 all funds represented by such uncashed checks, plus any interest
20 accrued thereon, shall be distributed consistent with California Code
21 of Civil Procedure Section 384 as follows: to The Children's
22 Advocacy Institute (CAI), founded at the nonprofit University of San
23 Diego School of Law in 1989. Neither Class Counsel nor Defendant's
24 counsel has any interest, pecuniary or otherwise, in CAI.
25
26
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1 2. Class Representative Service Award. In addition to the Individual Settlement
2 Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award
3 of not more than \$10,000 as the Class Representative Service Award.
4 Defendant does not presently intend to oppose a Class Representative Service
5 Award of no more than \$10,000 for Plaintiff. The Settlement Administrator
6 shall pay the Class Representative Service Award, either in the amount stated
7 herein if approved by the Court or some other amount as approved by the
8 Court, to Plaintiff from the Total Settlement Amount no later than ten (10)
9 calendar days after the Funding Date. Any portion of the requested Class
10 Representative Service Award that is not awarded to the Class Representatives
11 shall be part of the Net Settlement Amount and shall be distributed to
12 Settlement Class Members as provided in this Agreement. The Settlement
13 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her Class
14 Representative Service Award. Plaintiff shall be solely and legally
15 responsible to pay any and all applicable taxes on his Class Representative
16 Service Award and shall hold harmless the Released Parties from any claim
17 or liability for taxes, penalties, or interest arising as a result of the Class
18 Representative Service Awards. The Class Representative Service Award
19 shall be in addition to Plaintiff's Individual Settlement Payment as a
20 Settlement Class Member. Approval of this Settlement shall not be
21 conditioned on Court approval of the requested amount of the Class
22 Representative Service Award. In the event that the Court reduces or does not
23 approve the requested Class Representative Service Award, Plaintiff shall not
24 have the right to revoke the Settlement, and it will remain binding.
25
26
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1 3. Class Counsel Award. Defendant understands a motion by Class Counsel for
2 attorneys' fees not to exceed one-third of the Total Settlement Amount
3 currently estimated to be \$100,000.00 plus costs and expenses supported by
4 declaration not to exceed Fifteen Thousand Dollars (\$15,000.00), from the
5 Total Settlement Amount will be filed. Any portion of the requested Class
6 Counsel Award that is not awarded to Class Counsel shall be part of the Net
7 Settlement Amount and shall be distributed to Settlement Class Members as
8 provided in this Agreement. The Settlement Administrator shall allocate and
9 pay the Class Counsel Award to Class Counsel from the Total Settlement
10 Amount no later than five (5) calendar days after the Funding Date. Class
11 Counsel shall be solely and legally responsible to pay all applicable taxes on
12 the payment made pursuant to this paragraph. The Settlement Administrator
13 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
14 made pursuant to this paragraph. In the event that the Court reduces or does
15 not approve the requested Class Counsel Award, Plaintiffs and Class Counsel
16 shall not have the right to revoke the Settlement, or to appeal such order, and
17 the Settlement will remain binding.

21 4. PAGA Settlement. Ten Thousand Dollars (\$10,000) shall be allocated from
22 the Total Settlement Amount for settlement of claims for civil penalties under
23 the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
24 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
25 Settlement (\$7,500) to the California Labor and Workforce Development
26 Agency no later than twenty-five (25) calendar days after the Funding Date
27 (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA Settlement
28

1 (\$2,500) will be distributed to the Aggrieved Employees as described in this
2 Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of
3 distributing the PAGA Settlement to the Aggrieved Employees, each
4 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
5 Employee Payment using the PAGA Payment Ratio as defined above.
6

- 7 5. Settlement Administration Costs. The Settlement Administrator shall be paid
8 for the costs of administration of the Settlement from the Total Settlement
9 Amount. The estimate of the Settlement Administration \$12,550 The
10 Settlement Administrator shall be paid the Settlement Administration
11 Costs no later than twenty-five (25) calendar days after the Funding Date.
12

- 13 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
14 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
15 twenty-eight (28) days following the expiration of the Response Deadline, which
16 motion shall request final approval of the Settlement and a determination of the
17 amounts payable for the Class Representative Service Award, the Class Counsel
18 Award, the PAGA Settlement, and the Settlement Administration Costs.
19

- 20
21 1. Declaration by Settlement Administrator. No later than fourteen (14) days
22 after the Response Deadline, the Settlement Administrator shall submit a
23 declaration in support of Plaintiffs' motion for final approval of this
24 Settlement detailing the number of Notice Packets mailed and re-mailed to
25 Settlement Class Members, the number of undeliverable Notice Packets, the
26 number of timely requests for exclusion, the number of objections received,
27 the amount of the average Individual Settlement Payment and highest
28

1 Individual Settlement Payment, the Settlement Administration Costs, and any
2 other information as the Parties mutually agree or the Court orders the
3 Settlement Administrator to provide.
4

5 2. Final Approval Order and Judgment. Class Counsel shall present an Order
6 Granting Final Approval of Class Action Settlement to the Court for its
7 approval, and Judgment thereon, at the time Class Counsel files the Motion
8 for Final Approval.
9

10 N. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to
11 revoke the Settlement and Defendant shall have, in its sole discretion, the option to
12 terminate this Settlement if, after the Response Deadline, the number of Settlement
13 Class Members who submitted timely and valid written requests for exclusion from
14 the Settlement is at least ten percent (10%) of all Settlement Class Members. If
15 Defendant exercises the option to terminate this Settlement, Defendant shall: (a)
16 provide written notice to Class Counsel within five (5) calendar days after (i)
17 providing the Class Data to the Settlement Administrator or (ii) the Settlement
18 Administrator provides information regarding opt outs (which is to occur no later than
19 fourteen (14) calendar days after the Response Deadline, and (b) pay all Settlement
20 Administration Costs incurred up to the date or as a result of the termination; and the
21 Parties shall proceed in all respects as if this Agreement had not been executed.
22
23

24 O. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
25 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
26 Final Approval, including the Order Granting Final Approval of Class Action
27 Settlement, and Judgment before filing with the Court. The Parties and their counsel
28

1 will cooperate with each other and use their best efforts to affect the Court's approval
2 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
3 Judgment.

4
5 P. Cooperation. The Parties and their counsel will cooperate with each other and use
6 their best efforts to implement the Settlement.

7
8 Q. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
9 except such proceedings necessary to implement and complete the Settlement, pending
10 the Final Approval/Settlement Fairness Hearing to be conducted by the Court

11
12 R. Amendment or Modification. This Agreement may be amended or modified only by
13 a written instrument signed by counsel for all Parties or their successors-in-interest.

14
15 S. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or
17 inducements have been made to any Party concerning this Agreement or its Exhibit
18 other than the representations, warranties and covenants contained and memorialized
19 in this Agreement and its Exhibit.

20
21 T. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
22 represent they are expressly authorized by the Parties whom they represent to negotiate
23 this Agreement and to take all appropriate Action required or permitted to be taken by
24 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
25 documents required to effectuate the terms of this Agreement. The persons signing
26 this Agreement on behalf of Defendant represents and warrants that he/she is
27 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
28

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.

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

5
6 AA. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently
7 intend to pursue any claims against the Released Parties, including, but not limited to,
8 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
9 regardless of whether Class Counsel is currently aware of any facts or legal theories
10 upon which any claims or causes of action could be brought against Released Parties,
11 including those facts or legal theories alleged in the operative complaint in this Action.
12 The Parties further acknowledge, understand and agree that this representation is
13 essential to the Agreement and that this Agreement would not have been entered into
14 were it not for this representation.

15
16
17 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
18 certification for purposes of this settlement only.

19
20 CC. No Admissions by the Parties. Plaintiff has claimed and continue to claim that the
21 Released Claims have merit and give rise to liability on the part of Defendant.
22 Defendant claims that the Released Claims have no merit and do not give rise to
23 liability. This Agreement is a compromise of disputed claims. Nothing contained in
24 this Agreement and no documents referred to and no action taken to carry out this
25 Agreement may be construed or used as an admission by or against the Defendant or
26 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other
27
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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:

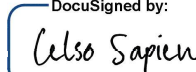
DATED: 5/5/2021

DocuSigned by:

AB344506AAB3415...
OSCAR ALMANZA

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

DATED: 5/4/2021

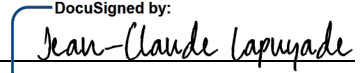
DocuSigned by:

7A63A6BE79424C3...
XTREME XPRESS, INC.
Celso Sapien

Printed Name
President
Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 5/5/2021

JCL LAW FIRM, A.P.C.

By: 
0EBC25D5B9CD469...
Attorneys for the Named Plaintiffs and the Plaintiff Class

1 DATED: 5/5/2021

ZAKAY LAW GROUP, APLC

2 By:



3 Attorneys for the Named Plaintiff and the Class

4
5
6 DATED: 5/4/2021

THE LAW OFFICE OF MANDEEP S. RUPAL

7 By:

/s/ Mandeep S. Rupal

8 Attorneys for Defendants

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT
AND FINAL HEARING DATE**

Almanza v. Xtreme Xpress, Inc.
Superior Court for the County of Los Angeles
Case No. 20STCV15387

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

A SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you receive this Notice, unless you opt-out of the Settlement, you will automatically receive a settlement payment. The estimated amount of your settlement payment is \$<<Est.SetAmt>>. In exchange, you give up any right to sue DEFENDANT separately for any claims asserted in this Lawsuit (which will be defined below).
DEADLINE TO OPT OUT <<INSERT DATE>>	You can “opt-out” from the Settlement if you do not wish to participate in the Settlement. If you opt out, you will not receive a settlement payment and you will not be bound by the release. The deadline to opt-out of the Settlement is << INSERT DATE >>.
DEADLINE TO OBJECT <<INSERT DATE>>	Write to the Court if you think the Settlement is not fair. However, by objecting, you agree to be bound to the settlement if the Court overrules your objection(s). The Deadline to object to the Settlement is << INSERT DATE >>
GO TO A HEARING ON <<INSERT DATE>> AT << INSERT TIME >>	Ask to speak in Court about why you think the Settlement is not fair at the time of the final approval hearing. The final approval hearing is scheduled for << INSERT DATE >> at << INSERT TIME >> a.m., in Dept., 6 of the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, CA 90012

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit entitled *Almanza v. Xtreme Xpress, Inc.*, Case No. 20STCV15387, currently pending in the Superior Court for the County of Los Angeles (the “Court”) has been reached between OSCAR ALMANZA (“Plaintiff”) and XTREME XPRESS, INC. (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a Settlement Class Member, which is defined as:

All of Defendants’ current and former non-exempt employees employed in California between

April 21, 2016, and March 18, 2021.

The “Class Period” is the period of time running from April 21, 2016, and March 18, 2021.

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

2. What is this class action lawsuit about?

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

On April 21, 2020, Plaintiff filed a class action complaint in the San Diego Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to reimburse employees for required business expenses in violation of California Labor Code sections 2802; (7) failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (8) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203 and; (9) for violations of the California Labor Code Private Attorney General Act (“PAGA”). Thereafter, Defendants answered the Complaint.

On March 18, 2021, the Parties participated in mediation presided over by the Honorable Judge William Pate (Ret.), a respected jurist and mediator. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based on a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the JCL Law Firm, APC and the Zakay Law Group, APLC to serve as Class Counsel.

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

3. What are the terms of the Settlement?

Total Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Thousand Dollars (\$300,000) (the “Total Settlement Amount”) to fund the settlement. The Total Settlement Amount includes the payment of all Individual Settlement Payments to participating Settlement Class Members, the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Award to the Plaintiff.

If approved, Defendant will fund the Total Settlement Amount on or before March 18, 2022 by depositing the money into a Qualified Settlement Fund maintained by the third party Settlement Administrator.

Amounts to be Paid From the Total Settlement Amount. The Settlement provides for certain payments to be made from the Total Settlement Amount, which will be subject to final Court approval, and which will be

deducted from the Total Settlement Amount before settlement payments are made to Settlement Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$12,550, for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Subject to Court approval, Class Counsel shall seek a Class Counsel Award in an amount equal to one-third of the Total Settlement Amount currently estimated to be \$100,000 for reasonable attorneys' fees, plus costs and expenses supported by declaration not to exceed \$15,000.00. The Class Counsel Award is intended to compensate and reimburse Class Counsel for all of the work already performed and all of the work remaining to be performed by Class Counsel in documenting the settlement, securing Court approval of the settlement, administering the settlement, and making sure that the settlement is fairly administered and implemented.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Hundred Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Settlement. A payment of \$10,000 relating to Plaintiff's claim under the Private Attorney General's Act ("PAGA"), \$7,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$2,500 will be distributed to Aggrieved Employees which are all of Defendants' current and former non-exempt employees employed in California at the between February 13, 2019 and March 18, 2021.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Settlement Administration Expenses, Class Counsel Award, the Class Representative Service Award and the PAGA Settlement are deducted from the Total Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Settlement Class Members"). The Individual Settlement Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked for all Participating Class Members that occurred during the Class Period and (b) multiplying the result by each individual Participating Class Member's workweeks worked that occurred during the Class Period.

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

Tax Matters. 25% of each Settlement Share constitutes wages in the form of back-pay (and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment) and 75% of each Settlement Share constitutes interest, penalties and other non-wage payments (and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment). Neither Class Counsel nor Defendants' counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

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

4. What Do I Release Under the Settlement?

Released Class Claims. Upon the Funding Date, each of the Participating Class Members shall release all class claims alleged in the complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers compensation, and class claims outside of the Class Period. The Class Claims asserted in the Action include violations of the following, Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1197.1, and 2802.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released PAGA Claims. Upon the Funding Date, Plaintiff, the LWDA and the State of California shall release any and all PAGA Claims alleged in the operative complaint and in Plaintiff's notice to the LWDA which occurred during the PAGA Period including Labor Code sections 201, 201.3, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Periods.

5. How much will my payment be?

Defendant's records reflect that you have <<____>> work-weeks/work-days worked during the Class Period.

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendant's records reflect that you have <<____>> work-weeks/work-days worked during the PAGA Period.

Based on this information, your estimated Individual Settlement Payment is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than [redacted], 2021 [forty-five (45) days after the Notice].

6. How can I get a payment?

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

The Court will hold a hearing on [redacted] to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

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

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms.**

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____, 2021. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I have read the Class Notice and I wish to opt out of the class action and settlement of the case *Almanza v. Xtreme Xpress, Inc.*, currently pending in the Superior Court for the County of Los Angeles, Case No. 20STCV15387. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

The address for the Settlement Administrator is _____. Written requests for exclusion that are postmarked after _____, 2021, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

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

- Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections must be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All objections or other correspondence must also state the name and number of the case, which is *Almanza v. Xtreme Xpress, Inc.*, currently pending in the Superior Court for the County of Los Angeles, Case No. 20STCV15387.

To object to the Settlement, you must not opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

The objections must be delivered or mailed to the Settlement Administrator no later than _____, 2021 with copies to the Parties' counsel. The address for the Settlement Administrator is _____.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade
The JCL Law Firm, APC
3990 Old Town Ave., Suite C204
San Diego, CA 92110
Tel: 619-599-8292
Email: jlapuyade@jcl-lawfirm.com
Website: www.jcl-lawfirm.com

SHANI ZAKAY, ESQ.
ZAKAY LAW GROUP, APLC
3990 OLD TOWN AVE., SUITE C204
SAN DIEGO, CA 92110
TEL: 619-255-9047

Defense Counsel

MANDEEP RUPAL, ESQ.
LAW OFFICE OF MANDEEP RUPAL
4740 GREEN RIVER ROAD, SUITE 207
CORONA, CA 92880
TEL: 951-460-0830

The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the Los Angeles County Superior Court, located at 312 Spring Street, Los Angeles, California 90012 in Department 6 before Judge Elihue Berle. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The

purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to all Settlement Class Members that wish to speak at the hearing. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

Members of the Settlement Class that wish to attend the hearing for final approval of this Settlement may appear virtually by contacting <https://www.lacourt.org/lacc/>. The Settlement Class member should be prepared to provide the case name and case number and date of the final approval hearing which is all set forth in this Notice.

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

- You may call the Settlement Administrator at _____ or write to *Almanza v. Xtreme Xpress, Inc.*, currently pending in the Superior Court for the County of Los Angeles, Case No. 20STCV15387, Settlement Administrator, c/o _____.
- Members of the Settlement Class may review the papers, pleadings and records on file with the Court by scheduling an appointment with the clerk of the Los Angeles Superior Court at (213) 830-0803 between the hours of 8:30 a.m. and 10:30 a.m., and 1:30 p.m. and 3:30 p.m., Monday through Friday.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to the JCL LAW FIRM, APC, 3990 Old Town Ave., Suite C204, San Diego, CA 92110.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

ADDITIONAL IMPORTANT INFORMATION

- **DEFENDANT supports the Settlement and will not retaliate in any manner** against any Settlement Class Member who stays in the Settlement Class and receives his/her Individual Settlement Payment, opts out of the Settlement, or objects to the Settlement.
- **It is YOUR RESPONSIBILITY to keep your address current with the Settlement Administrator.** If your address or contact information changes, you must notify the Settlement Administrator of the change. Otherwise, your settlement payment will be mailed to the address where you received this Notice.
- **Individual Settlement Payment checks must be cashed soon after receipt.** Monies represented by checks that remain uncashed 180 days after the date of issuance will be voided and the monies represented by those uncashed checks will distributed consistent with California Code of Civil Procedure Section 384 as follows: to The Children's Advocacy Institute (CAI). Founded at the nonprofit University of San Diego School of Law in 1989, CAI is one of the nation's premiere academic, research, and advocacy organizations working to improve the lives of all children and youth, with special emphasis on reforming the child protection and foster care systems and improving outcomes for youth aging out of foster care. Conducted through offices in San Diego, Sacramento, and Washington, D.C., CAI's research and advocacy component seeks to leverage change for children and youth at the federal and state levels through impact litigation, regulatory and legislative advocacy, and public education. In its academic component, CAI trains law students and attorneys to be effective child advocates throughout their legal careers. CAI's Dependency and Delinquency clinics allow law students to represent parties in juvenile court proceedings, under the guidance of experienced attorneys and CAI

faculty, and its Policy Clinic allows law students to engage with CAI staff on ongoing policy advocacy projects.

EXHIBIT 2