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ELBERT MCCRAY, on behalf of himself
6 and all others similarly situated

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE**

10
11 ELBERT MCCRAY, on behalf of himself and all
others similarly situated,

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13 Plaintiffs,

14 v.

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16 LOS ALAMITOS RACE COURSE, a California
corporation; and DOES 1 through 100, Inclusive

17
18 Defendants.

) CASE NO.: 30-2020-01131139-CU-OE-
) CXC

)
) [Assigned for all purposes to the Hon.
) Randall J. Sherman - Dept. "CX105"]

)
) **NOTICE OF MOTION AND MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT AND**
) **PROVISIONAL CLASS**
) **CERTIFICATION FOR SETTLEMENT**
) **PURPOSES ONLY; DECLARATIONS**
) **OF JAMES A. DE SARIO**

)
) DATE: August 26, 2022
) TIME: 10:00 a.m.
) DEPT.: CX105

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) Court Reservation Number: 73781414
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 26, 2022, at 10:00 a.m., in Department CX105 of
3 the Superior Court of the State of California, County of Orange, plaintiff, ELBERT MCCRAY
4 ("Plaintiff") on behalf of himself and all others similarly situated will move and hereby does move
5 for Preliminary Approval of the proposed Class Settlement in this case. This motion is unopposed
6 and based on the Joint Stipulation and Settlement Agreement, which is submitted herewith.

7 This motion will be based on this Notice of Motion, the Memorandum of Points and
8 Authorities filed herewith, the Declaration of James A. De Sario, exhibits attached thereto, the and
9 argument of counsel and upon such other material contained in the file and pleadings of this action.

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11 DATED: June 9, 2022

THE NOURMAND LAW FIRM, APC

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By:



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Michael Nourmand, Esq.

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James A. De Sario, Esq.

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Attorneys for Plaintiff and Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff, ELBERT MCCRAY ("Plaintiff") on behalf of himself and all others similarly
4 situated and defendant, LOS ALAMITOS RACE COURSE ("Defendant") (collectively Plaintiff
5 and Defendants referred to as, "Parties") hereby apply for preliminary approval of the proposed
6 class settlement upon the terms and conditions set forth in the Stipulation of Class Action
7 Settlement ("Settlement Agreement"), a copy of which is attached hereto as Exhibit "1."

8 On February 10, 2020, Plaintiff filed a wage-and-hour class action complaint ("Complaint")
9 against Defendant alleging the following causes of action: (1) failure to pay overtime wages; (2)
10 failure to pay minimum wage; (3) failure to provide meal periods or compensation in lieu thereof;
11 (4) failure to pay all earned wages at termination/resignation; (5) failure to provide accurate wage
12 statements; and (6) violation of Business and Professions Code §§ 17200, *et seq.* Thereafter, On
13 August 4, 2020, the Parties stipulated to allow Plaintiff to file a First Amended Complaint ("FAC")
14 to add a cause of action under the Private Attorneys General Act ("PAGA"). The Complaint and
15 the FAC will be referred to as the "Litigation."

16 In the Litigation, Plaintiff alleges, *inter alia*, that Defendant failed to pay overtime wages,
17 failed to pay minimum wage, failed to provide meal periods or compensation in lieu thereof, failed
18 to pay wages upon termination/resignation, failed to provide compliant accurate itemized wage
19 statements, violated the California Business and Professions Code §17200, *et seq.*, and violated the
20 PAGA. Defendant denies each of the allegations asserted in the Litigation, has repeatedly asserted
21 and continues to assert defenses to Plaintiff's claims and contentions, expressly denies that it
22 engaged in any wrongdoing or has any liability arising out of any of the facts or conduct alleged in
23 the Litigation.

24 Class Counsel engaged in formal and informal discovery which yielded information and
25 documentation concerning the claims set forth in the Litigation, such as obtaining a random
26 sampling of time and payroll records for Class Members, time and payroll records for Plaintiff,
27 Defendant's Collective Bargaining Agreement(s) ("CBA"), total number of Class Members during
28 the class period, number of shifts for Class Members during the Class Period and the average

1 hourly rate for Class Members. Plaintiff also interviewed Class Members who worked for
2 Defendant. Furthermore, counsel for the Parties have investigated the law as applied to the facts
3 discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential
4 damages claimed by Plaintiff.

5 Counsel for the Parties engaged in extensive discussions about the strengths and
6 weaknesses of the claims and defenses in the Litigation. Plaintiff and Defendant, participated in
7 private mediation with Marc Feder, Esq. ("Mr. Feder"), a well respected mediator in class and
8 representative actions, on June 3, 2021. Ultimately, the mediation process with Mr. Feder resulted
9 in the Parties reaching a settlement of the claims asserted in the Litigation.

10 The Parties concluded that there were benefits associated with settling the Litigation.
11 Specifically, the Parties concluded, after taking into account the sharply disputed factual and legal
12 issues involved in this Litigation, such as Defendant's contention that there were exemptions under
13 the CBA for overtime and meal periods, the risks attending further prosecution, the substantial
14 benefits to be received pursuant to the compromise and settlement of the Litigation as set forth in
15 the Settlement Agreement, that settlement on the terms set forth herein are in the best interest of
16 Plaintiff, the proposed Class, and Defendant, and is fair and reasonable.

17 II. THE SETTLEMENT

18 Subject to Court approval pursuant to California Code of Civil Procedure §382 and
19 California Rules of Court 3.769, et seq., Plaintiff and Defendant have agreed to settle the Litigation
20 by agreement upon the terms and conditions and for the consideration set forth in the Settlement
21 Agreement, a copy of which is attached hereto as Exhibit "1." A summary of the terms of the
22 settlement are as follows:

- 23 • Defendant will stipulate, for purposes of this settlement only, to certification of a
24 Settlement Class defined as: All non-exempt hourly employees of Defendant who
25 performed work in the State of California at any time during the Class Period, who
26 have not already released claims through a separate individual agreement or are not
27 covered by any prior court approved class action settlement during the Class Period
28 of February 10, 2016 to September 16, 2021 ("Class Period").

- Defendant will pay a maximum of \$750,000.00, which is referred to herein as the Settlement Amount or Gross Settlement Fund. The Settlement Amount is non-reversionary.
- Defendant's portion of employer taxes shall be paid Defendant separately and in addition to the Settlement Amount.
- Class Members who wish to participate in the settlement, i.e., those who do not timely and validly request to be excluded from the Settlement ("Participating Class Member"), will be paid their pro-rata share based on the number of Eligible Workweeks they worked during the Class Period.
- In addition, each Class Member who is a PAGA Group Member during the period of February 10, 2019 to September 16, 2021 ("PAGA Period") will be paid a pro-rata share of the \$5,000.00 allocated for PAGA penalties to PAGA Group Members based on a proportional share of the Eligible Workweeks they worked during the PAGA Period. Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement.
- The Administrative Costs for the administrative services provided by the Claims Administrator, CPT Group, Inc., shall not to exceed \$7,700.00 and will be paid out of the Settlement Amount.
- Class Counsel will apply for, and Defendant will not oppose, attorney's fees not to exceed \$250,000.00, which represents approximately 33% of the Gross Settlement Amount and litigation Costs not to exceed \$25,000.00. Attorney's fees and costs will be paid from the Settlement Amount.
- Class Counsel will apply for, and Defendant will not oppose, an enhancement payment of \$7,500.00 to Plaintiff. The enhancement payment will be paid out of the Settlement Amount.

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- Defendant has agreed to pay \$20,000 as PAGA penalties, seventy-five percent (75%) or \$15,000.00 of which will be paid to the LWDA and twenty-five percent (25%) or \$5,000.00 of which will be distributed, on a pro-rata basis, to PAGA Group Members. The PAGA penalties will be paid out of the Settlement Amount.
- Defendant estimated that the class consists of approximately 37,446 Eligible Workweeks as of May 14, 2021 and this estimate served as the basis for Plaintiff accepting the Settlement. Should the number of Eligible Workweeks increase by more than 10%, Defendant agrees to increase the Net Settlement Amount proportionately over the 10% threshold.

III. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation Second states at §30.44 (1985),

A two-step process is followed when considering class settlements . . . if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Conte & Newberg, Newberg on Class Actions, §11.26 (4th Ed. 2002) (hereinafter “Newberg on Class Actions”).

The procedures for submission of a proposed settlement for preliminary approval is discussed at Newberg on Class Actions, §11.24-11.26. Newberg observes at Section 11.24:

1 When the parties to an action reach a monetary settlement, they will usually prepare
2 and execute a joint stipulation of settlement, which is submitted to the court for
3 preliminary approval. The stipulation should set forth the central terms of the
4 agreement, including but not limited to, the amount of the settlement, form of
5 payment, manner of determining the effective date of settlement, and any recapture
6 clause.

7 The settlement in this case is fair, reasonable, and in the best interest of the class.

8 **IV. THE PRESUMPTION OF FAIRNESS**

9 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
10 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
11 conducted in good faith. Newberg on Class Actions, §11.51, *In re Chicken Anti-Trust Litigation*
12 (N.D. Ga. 1980) 560 F. Supp. 857, 962; *Pridd v. Edelman* (6th Cir. 1989) 883 F. 2d 438, 447; *Mars*
13 *Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F. 2d 677, 682.
14 Courts do not substitute their judgment for that of the proponents, particularly where, as here,
15 settlement has been reached with the participation of experienced counsel familiar with the
16 litigation. *Hammon v. Barry* (D.D.C. 1990) 752 F. Sup. 1087; *Steinberg v. Carey* (S.D. N.Y.
17 1979) 470 F. Supp. 471; *In re Armored Car Anti-Trust Litigation* (N.D. Ga. 1979) 472 F. Supp.
18 1357; *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79
19 F.R.D. 571.

20 While the recommendations of counsel proposing the settlement are not conclusive, the
21 Court can properly take them into account, particularly where, as here, they have been involved in
22 litigation for some period of time, appear to be competent, have experience with this type of
23 litigation, and have obtained substantial data from the opposing party. See Newberg on Class
24 Actions, §11.47.

25 In this case, the settlement was reached after extensive factual and legal research, foramal
26 and informal discovery and exchange of documents (i.e., time and payroll records for Plaintiffs and
27 sampling of non-exempt employees, relevant CBAs and policies, etc.) to evaluate the asserted
28 claims in the Litigation, preparation of damage analysis from records and information produced for
mediation purposes, impact of further litigation based on disputes in the law (i.e., such as
preemption arguments stemming from Defendant's CBA) and a full day session of mediation with

1 an experienced class action mediator, Mr. Feder. The settlement that has been reached, subject to
2 this Court's approval, is the product of tremendous effort, and a great deal of expense by the parties
3 and their counsel.

4 The settlement amount is, of course, a compromise figure. However, counsel for Plaintiff
5 and Defendant are satisfied that this figure is reasonable in light of the risks and expense of
6 continued litigation.

7 **V. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

8 Attached hereto as Exhibit "1" is the Settlement Agreement. Attached to the Settlement
9 Agreement, as Exhibit "A," is the proposed Notice of Class Action and Proposed Resolution
10 ("Class Notice") and, as Exhibit "B," is the proposed Workweek Dispute Form (collectively,
11 referred to as "Notice Packet") to be distributed to Class Members in English and Spanish. A
12 notice of settlement of a class action "must contain an explanation of the proposed settlement and
13 procedures for class members to follow in filing written objections to it and in arranging to appear
14 at the settlement hearing and state any objections to the proposed settlement." California Rules of
15 Court 3.769(f). The proposed Class Notice satisfies these requirements.

16 The Parties respectfully request that this Court approve the above-referenced Notice Packet
17 and dissemination of the same to the Class Members, consistent with the manner and timing as set
18 forth in the Settlement Agreement. That is, pursuant to the terms of the Settlement Agreement,
19 within 7 calendar days after entry of the Order Granting Preliminary Approval of Class Action
20 Settlement (which proposed order is attached as Exhibit "C" to the Settlement Agreement),
21 Defendant shall deliver to the agreed upon Claims Administrator the Class List and then 14
22 calendar days thereafter, the Notice Packets are to be mailed by the Claims Administrator to Class
23 Members via first-class U.S. Mail. The parties have agreed to use CPT Group, Inc. ("CPT"), an
24 experienced settlement administrator, to administer the settlement. The administration costs will
25 be paid out of the Settlement Amount. It is requested that the Court appoint CPT to serve as the
26 Claims Administrator.

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1 VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON
2 OBJECTIVE EVIDENCE

3 A. The Settlement Was Negotiated at Arms Length and Not Collusive

4 The settlement that has been reached, subject to this Court's approval, is the product of
5 substantial effort by the Parties and their counsel. The settlement was reached after extensive
6 factual and legal investigation and research, numerous discussions, exchanges of documents and
7 information, correspondence, and a full day of mediation. The settlement amount is, of course, a
8 compromise figure. It took into account the risks related to liability, damages and all the defenses
9 asserted by Defendant.

10 Plaintiff asserts that the wage and hour claims and the claims for resulting penalties would
11 be certified. Plaintiff's counsel reviewed documents produced by Defendant, including but not
12 limited to CBAs and relevant policies on timekeeping, meal periods, payment of wages; sampling
13 of time and payroll records for Class Members; time and payroll records for Plaintiff; and based
14 thereon reasonably believed that Plaintiff would have a significant chance of certifying the class for
15 the claims asserted in the Litigation.

16 On the other hand, Defendant has argued that Plaintiff cannot meet the requirements of
17 class certification. In particular, Defendant believed that Plaintiff's would face difficulty in
18 certifying the class as to unpaid wage claims and meal period claims. Defendant claimed they
19 maintained compliant meal period policies and that meal periods were provided, and it did not
20 deter employees from taking meal periods. Defendant also claimed that it payed employees
21 correctly for all hours worked and issued compliant wage statements. Defendant also contends that
22 class certification would not be warranted because individual liability issues predominate
23 Plaintiff's claims and that there are preemption arguments under the CBAs.

24 While Plaintiff believes in his chance of success of certifying the claims, Plaintiff
25 recognized the potential risk, expense and complexity posed by further litigation. Litigating
26 Plaintiff's claims in this Litigation— claims that involve approximately 455 Class Members during
27 the Class Period— would require substantial additional preparation and discovery and ultimately
28 would involve the deposition and presentation of numerous witnesses (including expert witnesses),

1 as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation
2 have progressed any further, there would have been significant expense incurred by each side.

3 Again, Plaintiff and Defendant have very strong positions on liability in this case.
4 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in
5 Plaintiff's operative complaint, and further denies that, for any purpose other than that of settling
6 this lawsuit, this action is appropriate for class treatment. In light of the sharply contested legal
7 and factual issues, the risks of continued litigation, and substantial benefits to Class Members
8 under the Settlement Agreement, the terms and conditions of this class settlement are fair and
9 reasonable to all sides.

10 **B. The Settlement Amount is Well Within Range of Reasonableness**

11 The settlement amount reached in this case provides significant recovery to participating
12 Class Members and easily falls within the range of reasonableness.

13 Unpaid Wage Claims: Plaintiff on behalf of himself and similarly situated employees
14 alleges that Defendant failed to pay all of its employees for all hours worked by unevenly rounding
15 down the actual time worked. Based on the time records produced by Defendant for the sampling
16 of employees and Plaintiff, it was determined that on average Defendant was shaving 5.6 or .093
17 minutes of time per day. It was also determined that 56% of the shifts employees worked shifts
18 greater than eight hours.

19 $189,766$ (estimated number of shifts worked during the class period) $\times$ $.56$ (56% shifts
20 worked over 8 hours) $= 106,269 \times .093$ (minutes shaved per day) $= 9,883 \times \$27.41$ (\$18.27 average
21 hourly rate $\times 1.5$) $= \$270,893.03$.

22 $189,766$ (estimated number of shifts worked during the class period) $\times$ $.44$ (44% shifts
23 worked less than 8 hours) $= 83,497.04 \times .093$ (minutes shaved per day) $= 7,765.22 \times \$9.79$
24 (average minimum wage) $= 76,021.50$.

25 Therefore, the total exposure for Plaintiff's uneven rounding claim would equal
26 **\$346,914.53**. However, Defendant claimed that its rounding practice was neutral and lawful and
27 that the claim would not be suitable for class treatment since it would call for individualized
28 inquiry as to determining whether employees were working when clocked in early. Further,

1 Defendant argued that the overtime claim would be subject to CBA preemption and liquidated
2 damages would not be warranted. Plaintiff argued that employees were under the control of
3 Defendant and therefore must be compensated for all time worked. *Morrillion v. Royal Packing*
4 *Co.* (2000) 22 Cal.4th 575. Plaintiff also argued that Defendant's rounding practice was unlawful
5 as it overwhelmingly deprived employees in the aggregate of wages. *See's Candy Shops, Inc. v.*
6 *Sup. Ct.* (2012) 210 Cal.App4th 889. These legal issues were hotly contested between the Parties.

7 Recovery of Meal Break Premiums:

8 The time records for Plaintiff and the sampling of employees demonstrate that 62% of the
9 shifts there was no record of a meal break with an auto-deduct of 30 minutes and 38% of the shifts
10 there were no record of a meal break with no auto-deduct of 30 minutes. Plaintiff contends that
11 this equates to a 100% violation rate.

12 189,766 (number of shifts when an employee would have been entitled to a first meal break
13 during the class period) x .62 (62% of shifts there were no record of a meal break with an auto-
14 deduct) = 117,655 x .56 (56% shifts worked over 8 hours) = 65,887 x \$18.27 (average hourly rate)
15 = \$1,203,755.49

16 189,766 (number of shifts when an employee would have been entitled to a first meal break
17 during the class period) x .38 (38% of shifts there were no record of a meal break with no auto
18 deduct) = 72,111 x .44 (44% shifts worked less than 8 hours) = 31,729 x \$18.27 = \$579,688.83

19 Therefore, the total exposure for Plaintiff's meal period claim would equal **\$1,783,444.32.**

20 However, Defendant contends that it maintained compliant meal period policies and provided
21 employees the opportunity to take meal periods. Defendant also argued that Plaintiff's auto-deduct
22 theory would require individualized inquiry and therefore is not suitable for class treatment.

23 Plaintiff argued that non-exempt employees were not provided the opportunity to take meal periods
24 as they were discouraged from taking the same, which is evidenced from the time records. An
25 employer may not undermine a formal policy of providing meal breaks by pressuring employees to
26 perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.* (2005) 133
27 Cal.App. 949, 962-963. Please also see *Jaimez v. DAIOWS USA, Inc.* (2011) 181 Cal.App.4th
28 1286, 1304-1305—[proof of common scheduling policy that made taking breaks extremely difficult

1 would show violation]; *Dilts v. Penske Logistics, LLC* (S.D. Cal.2010) 267 F.R.D. 625,
2 638—[indicating that an informal anti-meal-beak policy enforced through ridicule or reprimand
3 would be illegal]. These legal issues were hotly contested between the Parties.

4 Wage Statement Penalties: The wage statement claim is a derivative claim from the alleged
5 unpaid wages. There are approximately 313 Class Members who worked during the one year
6 statute of limitation for wage statement violations. 313 number of non-exempt employees worked
7 during 1 year SOL for Labor Code §226 x \$4,000 maximum aggregate penalty. This equates to an
8 estimated exposure of \$1,252,000. However, Defendant claims that it issued compliant and
9 accurate wage statements since it paid all earned wages to its non-exempt employees and that this
10 claim would not be suitable for class treatment as it would call for individualized inquiry for the
11 derivative unpaid wage claims.

12 Waiting Time Penalties: The failure to pay all earned wages upon termination/resignation is
13 a derivative claim from the alleged unpaid wages. There are approximately 93 former employees
14 who fall within the three year liability period for this claim. 93 (total number of former class
15 members during the 3 year SOL for Labor Code §203) x \$4,384.80 ($\$18.27 \times 8 = \146.16×30
16 $\text{days} = \$4,384.80$). This equates to an estimated exposure of \$407,786.40. However, Defendant
17 claimed that they paid all wages to non-exempt employees and that this claim would not be
18 suitable for class treatment as it would call for individualized inquiry for the derivative unpaid
19 wage claims. Defendant's also argued that the Labor Code requires that there be a wilful showing
20 that the employer knew of its obligation and intentionally refused to act.

21 PAGA Penalties - There are approximately 15,941 pay periods during the relevant liability
22 period for this claim. The first pay period the PAGA penalty is \$100.00 and the subsequent pay
23 periods the PAGA penalty is \$200.00 per pay period. For purposes of mediation only, Plaintiff
24 calculated PAGA penalties based on \$100.00 per pay period, per violation. $\$500 \times 15,941 =$
25 $\$7,970,500$. Thus, the PAGA penalty exposure is estimated at \$7,970,500. However, Defendant
26 claimed that it properly paid employees wages for all hours worked and provided meal periods and
27 therefore it complied with the Labor Code. In other words, Defendant argued that they complied
28

1 with the Labor Code and thus there would be no underlying Labor Code violations, per pay period.
2 Defendant further argued that the Court had discretion to lower PAGA penalties where appropriate.

3 Plaintiff's counsel obtained a Settlement Amount of \$750,000. Class Counsel considers
4 this to be an excellent settlement for Class Members, when taking into account all issues and risks
5 related to liability and class certification and considering the case law regarding fair, reasonable,
6 and adequate settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139
7 ["Compromise is inherent and necessary in the settlement process. . .even if the relief afforded by
8 the proposed settlement is substantially narrower than it would be if the suits were to be
9 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
10 served by a voluntary settlement in which each side gives ground in the interest in avoiding
11 litigation."]; *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 628 ["It is
12 well-settled law that a cash settlement amounting to only a fraction of the potential recovery does
13 not. . .render the settlement inadequate or unfair."].

14 **VII. THE PROPOSED ATTORNEY'S FEES AND COSTS ARE REASONABLE**

15 Class Counsel seeks an attorney's fee award of \$250,000, which is approximately 33% of
16 the Settlement Amount, and costs not to exceed \$25,000. The requested fee falls well within the
17 historical range of attorney's fee awards under the common fund theory, which is generally from
18 20% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive,
19 and time-consuming litigation on a contingent fee basis. This case was litigated, investigated, and
20 extensive research was conducted.

21 Both California and federal courts have recognized that an appropriate method for awarding
22 attorney's fees in class actions is to award a percentage of the "common fund" created as a result of
23 the settlement. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 (recognizing
24 both the "percentage of recovery" and "lodestar/ multiplier" methods); *Vincent v. Hughes Air West,*
25 *Inc.* (9th Cir. 1977) 557 F.2d 759, 769.

26 The purpose of the common fund/percentage approach is to "spread litigation costs
27 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
28 burden alone." *Vincent*, supra, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d

1 162, at 167, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a
2 suit which creates a fund from which others derive benefits may require those passive beneficiaries
3 to bear a fair share of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet*
4 (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund
5 doctrine has been applied “consistently in California when an action brought by one party creates a
6 fund in which other persons are entitled to share.” The reasons for applying the common fund
7 doctrine include: “...fairness to the successful litigant, who might otherwise receive no benefit
8 because his recovery might be consumed by the expenses; correlative prevention of an unfair
9 advantage to the others who are entitled to share in the fund and who should bear their share of the
10 burden of its recovery; encouragement of the attorney for the successful litigant, who will be more
11 willing to undertake and diligently prosecute proper litigation for the protection or recovery of the
12 fund if he is assured that he will be properly and directly compensated should his efforts be
13 successful.” *Id.*

14 Several courts have expressed frustration with the alternative “lodestar” approach for
15 deciding fee awards, which usually involves wading through voluminous and often indecipherable
16 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re*
17 *Activision Securities Litigation*, (N.D. Cal 1989) 723 F. Supp. 1373, 1375:

18 “This court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit
19 analysis, the answer would be a resounding, ‘No!’ Not only do the Lindy Kerr-
20 Johnson analyses consume an undue amount of court time with little resulting
21 advantage to anyone, but in fact, it may be to the detriment of the class members.
22 They are forced to wait until the court has done a thorough, conscientious analysis
23 of the attorneys’ fee petition. Or, class members may suffer a further diminution of
24 their fund when a special master is retained and paid from the fund. Most
25 important, however, is the effect the process has on the litigation and the timing of
26 settlement. Where attorneys must depend on a lodestar approach, there is little
27 incentive to arrive at an early settlement.” [Emphasis added.]

28 The percentage approach is preferable to the lodestar because: (1) it aligns the interests of
class counsel and absent class members; (2) it encourages efficient resolution of the litigation by
providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on
judicial resources. *Id.* at 1378-79. The Ninth Circuit now routinely uses the percentage of the

1 common fund approach to determine the award of attorney's fees. (E.g., *In re Pacific Enterprises*
2 *Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79.

3 Plaintiff's counsel's request for fees of approximately 33% of the Settlement Amount is
4 within the range of reasonableness. Historically, courts have awarded percentage fees in the range
5 of 20% to 50%, depending on the circumstances of the case. Newberg on Class Actions, supra,
6 §14.03; *In re Activision Securities Litigation* (N.D.Cal. 1989) 723 F.Supp. 1373, 1378.) According
7 to Newberg on Class Actions: "No general rule can be articulated on what is a reasonable
8 percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee
9 award from a common fund in order to assure that the fees do not consume a disproportionate part
10 of the recovery obtained for the class, although somewhat larger percentages are not
11 unprecedented." Newberg on Class Actions, §14.03.

12 Newberg on Class Actions further notes: "[A]chievement of a substantial recovery with
13 modest hours expended should not be penalized but should be rewarded for considerations of time
14 saved by superior services performed." Newberg on Class Actions, §14.01, p. 14-10:14-11.

15 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
16 associated with this class action on a pure contingency basis. The factual and legal issues posed in
17 this case were evolving and difficult. Based on Class Counsel's past experience in wage and hour
18 class action litigation, it is safe to state that Class Counsel is very likely to be called upon, after the
19 Class Notice has been sent, to expend substantial amounts of additional time to help Class
20 Members understand the terms of the proposed settlement, and to assist Class Members in the
21 preparation and documentation of their claims. It is also likely that, even after final approval of the
22 settlement has been granted, Class Counsel will be called upon to expend additional amounts of
23 time in the presentation and resolution of contests and disputes relating to Class Members' claims
24 under the terms of the proposed settlement, as to the amounts of individual claims and perhaps
25 other individual issues.

26 The Court should preliminarily approve the requested attorney's fees and costs, which are
27 justified by the outstanding results achieved, the complexity of the issues, the difficulty of the case,
28

1 and the great risk undertaken by Class Counsel. The requested attorney's fees will not be opposed
2 by Defendant, and are well within established guidelines.

3 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**
4 **PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE**

5 Plaintiff is entitled to an enhanced award for his services as class representatives and risk in
6 being the Plaintiff, not to mention that Plaintiff will be providing Defendant a general release of
7 claims in exchange for the enhancement award. Defendant does not oppose the requested
8 enhancement to Plaintiff. Class Counsel can attest that Plaintiff devoted a great deal of time and
9 work assisting counsel in this case, communicated with counsel very frequently, and were a very
10 valuable participant in the strategy for and success of the mediation. Plaintiff risked intrusive
11 discovery and the payment of employer costs. Plaintiff will provide a declaration at the time of
12 final approval detailing his efforts as the class representative. Class Counsel seeks an enhancement
13 of \$7,500.00 for Plaintiff for his service.

14 **IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

15 **A. The Class Should Be Preliminarily Certified**

16 In California, there are two certification prerequisites: (1) the existence of an "ascertainable
17 class," and (2) "a well defined community of interest in the questions of law and fact involved
18 affecting the parties to be represented." *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704
19 (citation omitted). In addition, as set forth above, California courts utilize the procedures
20 prescribed by the Federal Rules of Civil Procedure in class actions filed in California. Schneider v.
21 Vennard (1986) 183 Cal.App.3d 1340, 1345-46; *Daar*, 67 Cal.2d at 695; *Vasquez v. Sup. Ct.*
22 (1971) 4 Cal.3d 800. California Civil Code §1781(b) provides:

23 The court shall permit the suit to be maintained on behalf of all members to the
24 represented class if all of the following conditions exist: (1) It is impracticable to
25 bring all members of the class before the court. (2) The questions of law or fact
26 common to the class are substantially similar and predominate over the questions
27 affecting the individual members. (3) The claims or defenses of the representative
28 plaintiffs are typical of the claims or defenses of the class. (4) The representative
plaintiffs will fairly and adequately protect the interests of the class.

Each of the criteria for class certification is clearly satisfied herein.

1. **Numerosity** - California law requires the class to be so numerous that

1 utilization of the class action procedure will inure to the benefit of the judicial system. *Richmond*
2 *v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470. The Defendant identified potential class members
3 from its time and payroll records and upon final preliminary approval has agreed to provide the
4 Class List to the Claims Administrator. Defendant identified a total of approximately 455 Class
5 Members. This number exceeds the minimum number of individuals required to meet the
6 numerosity requirement.

7 **2. Commonality** - California law also requires that “questions of law or fact
8 common to the class [be] substantially similar and predominate over the questions affecting the
9 individual members.” Common issues predominate when they would be “the principal issues in
10 any individual action, both in terms of time to be expended in their proof and of their importance.”
11 *Vasquez* 4 Cal.3d at 810. Common questions need only be “sufficiently pervasive to permit
12 adjudication in a class action rather than in a multiplicity of suits.” *Id.* Commonality is easily
13 satisfied if there is one issue common to class members. *Hanlon v. Chrysler Corp.* (9th Cir. 1988)
14 150 F.3d 1011, 1019.

15 Here, common issues, without limitation, include whether Defendant violated applicable
16 wage laws, i.e., failed to pay its non-exempt employees minimum and overtime wages, failed to
17 provide meal periods, failed to provide compliant wage statements, failed to timely pay all earned
18 wages to terminated and/or resigned employees, etc. Because there are common issues, this
19 requirement is satisfied for purposes of settlement.

20 **3. Typicality** - Typicality requires only that the named plaintiff’s interests in
21 the action be significantly similar to those of other class members. *Richmond*, 29 Cal.3d at 74-75.
22 A representative plaintiff’s claims are typical if they arise from the same event, practice, or course
23 of conduct that gives rise to the claims of other class members, and if his or her claims are based
24 on the same legal theories. *Miller v. Woods* (1983) 16 Cal.App.3d 862, 874. Indeed, when the
25 same underlying conduct affects the named plaintiffs and the class sought to be represented, the
26 typicality requirement is met irrespective of any varying fact patterns that may underlie individual
27 claims. *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473 - named plaintiff’s
28 interests must only be significantly similar to other class members.

1 In this case, Plaintiff's claims are precisely the same as those of the class he seeks to
2 represent: like other members of the Class, he was employed by Defendant during the relevant time
3 period, performed similar duties for Defendant, and Defendant's policies were uniformly applied to
4 its employees.

5 As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
6 1341, explained:

7 [I]t has never been the law in California that the class representative must have
8 *identical* interests with the class members. The only requirements are that common
9 questions of law and fact *predominate* and that the class representative be *similarly*
situated. *Id.* at 1347 (citation omitted, emphasis in original).

10 Accordingly, Plaintiff's claims are typical of those of the Class Members.

11 4. **Adequacy of Representation** - To maintain a class action, the
12 representative plaintiff must adequately protect the interests of the class. California Civil Code
13 §1781(b)(4). Adequacy of representation consists of two components. First, there must be no
14 disabling conflicts of interest between the class representatives and the class. Second, the class
15 representative must be represented by counsel who are competent and experienced in the kind of
16 litigation to be undertaken. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450.

17 (a) **No Disabling Conflict of Interest Exist Between the Class**
18 **Representatives and the Class**

19 No conflicts, disabling or otherwise, exist between the Class Representative and Class
20 Members because the Plaintiff has allegedly been damaged by the same alleged conduct and has
21 the incentive to fairly represent all Class Members' claims to achieve the maximum possible
22 recovery. Indeed, the Class Representative stands in the same shoes as the Class Members with the
23 same incentive to maximize the overall recovery. *Richmond*, 29 Cal.3d at 473; *Harrison v. Bd. of*
24 *Supervisors* (1975) 44 Cal.App.3d 852, 863.

25 (b) **Class Counsel are Experienced Class Action Attorneys**

26 Class Counsel are experienced class action attorneys, have been appointed as class counsel
27 in numerous class actions, and have a successful track record in litigating class actions. After a
28 thorough investigation and settlement discussions, the parties arrived at terms that they viewed was

1 in the best interest of both the Class Members and the parties.

2 Plaintiff's goals have been realized to have redress for the employees whose wage and hour
3 rights were violated. While Defendant denies liability, it has nonetheless agreed to settle the
4 matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of
5 this Settlement, many of the Class Members may be denied any recourse for Defendants' alleged
6 violations.

7 **5. Superiority of Class Action** - Also relevant to the Court's certification
8 decision is whether a class action is the superior method of adjudication. *Schneider* 183
9 Cal.App.3d at 1347. The California Supreme Court has "repeatedly emphasized the importance of
10 the class action device for vindicating the rights asserted by large groups of persons." *Keating v.*
11 *Sup. Ct.* (1982) 31 Cal.3d at 469 (recognizing that class actions are useful for fashioning effective
12 and inclusive group remedy). The class device is even more appropriate to adjudicate the rights of
13 large numbers of similarly situated victims who lack the sophistication, financial wherewithal, or
14 individual incentive to sue on their own. For example, in *Vasquez v. Sup. Ct.*, the California
15 Supreme Court emphasized that "[i]ndividual actions by each of the defrauded consumers is often
16 impracticable because the amount of individual recovery would be insufficient to justify bringing a
17 separate action; thus an unscrupulous seller retains the benefits of its wrongful conduct." *Vasquez*
18 4 Cal.3d at 808. The Court in *Vasquez* also recognized several other benefits of class action
19 treatment:

20 A class action by consumers produces several salutary byproducts, including a
21 therapeutic effect upon those sellers who indulge in fraudulent practices, aid to
22 legitimate business enterprises by curtailing illegitimate competition, and avoidance
23 to the judicial process of the burden of multiple litigation involving identical claims.
Id. State v. Levi Straus & Co. (1986) 41 Cal.3d 460, 471 - noting that consumer
class actions are "an essential tool for the protection of consumers against
exploitative business practices".

24 This case is no exception. Given the size of the potential individual recovery, it would be
25 impracticable to bring each Class Member's claim as an individual claim.

26 Accordingly, the Class meets all criteria for certification and should be certified for
27 purposes of effectuating this settlement. *Hogya v. Sup. Ct.* (1977) 75 Cal.App.3d 122 - if the
28 action satisfies the statutory criteria, the court must certify the class; *Dunk* 48 Cal.App.4th at 1807

1 n. 19 - a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes
2 and courts should take settlement into account in evaluating class certification; *Amchen Products,*
3 *Inc. v. Windsor* (1977) 521 U.S. 591, 620 - because the Court is certifying this action for settlement
4 purposes only, it need not determine whether the class would be manageable for litigation
5 purposes.

6 X. CONCLUSION

7 The proposed Class Settlement is fair, adequate, and reasonable. It will result in substantial
8 payments to Class Members; it is non-collusive; and it was achieved as the result of informed,
9 extensive, and arms' length negotiations conducted by counsel for respective parties who are
10 experienced in wage and hour class action litigation. For the foregoing reasons, the Parties
11 respectfully request that the Court grant preliminary approval of the proposed settlement, sign the
12 proposed Order, approve and authorize mailing of the proposed Notice Packet submitted herewith,
13 and set a date for the final approval hearing.

14 *Respectfully Submitted,*

15 DATED: June 9, 2022

THE NOURMAND LAW FIRM, APC

16
17 By:


18 Michael Nourmand, Esq.
19 James A. De Sario, Esq.
20 Attorneys for Plaintiff and Putative Class
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1 Class Members during the class period, number of shifts for Class Members during the Class
2 Period and the average hourly rate for Class Members. Plaintiff also interviewed Class Members
3 who worked for Defendant. Furthermore, counsel for the Parties have investigated the law as
4 applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses
5 thereto, and the potential damages claimed by Plaintiff.

6 5. Counsel for the Parties engaged in extensive discussions about the strengths and
7 weaknesses of the claims and defenses in the Litigation. Plaintiff and Defendant, participated in
8 private mediation with Marc Feder, Esq. ("Mr. Feder"), a well respected mediator in class and
9 representative actions, on June 3, 2021. Ultimately, the mediation process with Mr. Feder resulted
10 in the Parties reaching a settlement of the claims asserted in the Litigation.

11 6. The Parties concluded that there were benefits associated with settling the
12 Litigation. Specifically, the Parties concluded, after taking into account the sharply disputed
13 factual and legal issues involved in this Litigation, such as Defendant's contention that there were
14 exemptions under the CBA for overtime, the risks attending further prosecution, the substantial
15 benefits to be received pursuant to the compromise and settlement of the Litigation as set forth in
16 the Settlement Agreement, that settlement on the terms set forth herein are in the best interest of
17 Plaintiff, the proposed Class, and Defendant, and is fair and reasonable.

18 **The Proposed Settlement**

19 7. Plaintiff and Defendant have agreed to settle the Litigation by agreement upon the
20 terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of
21 which is attached hereto as Exhibit "1." A summary of the terms of the settlement are as follows:

- 22 • Defendant will stipulate, for purposes of this settlement only, to certification of a
23 Settlement Class defined as: All non-exempt hourly employees of Defendant who
24 performed work in the State of California at any time during the Class Period, who
25 have not already released claims through a separate individual agreement or are not
26 covered by any prior court approved class action settlement during the Class Period
27 of February 10, 2016 to September 16, 2021 ("Class Period").
28

- 1 ● Defendant will pay a maximum of \$750,000.00, which is referred to herein as the
2 Settlement Amount or Gross Settlement Fund. The Settlement Amount is non-
3 reversionary.
- 4 ● Defendant's portion of employer taxes shall be paid Defendant separately and in
5 addition to the Settlement Amount.
- 6 ● Class Members who wish to participate in the settlement, i.e., those who do not
7 timely and validly request to be excluded from the Settlement ("Participating Class
8 Member"), will be paid their pro-rata share based on the number of Eligible
9 Workweeks they worked during the Class Period.
- 10 ● In addition, each Class Member who is a PAGA Group Member during the period
11 of February 10, 2019 to September 16, 2021 ("PAGA Period") will be paid a pro-
12 rata share of the \$5,000.00 allocated for PAGA penalties to PAGA Group Members
13 based on a proportional share of the Eligible Workweeks they worked during the
14 PAGA Period. Class Members who are PAGA Group Members will not be
15 permitted to exclude themselves from the PAGA claim portion of the Settlement.
- 16 ● The Administrative Costs for the administrative services provided by the Claims
17 Administrator, CPT Group, Inc., shall not to exceed \$7,700.00 and will be paid out
18 of the Settlement Amount.
- 19 ● Class Counsel will apply for, and Defendant will not oppose, attorney's fees not to
20 exceed \$250,000.00, which represents approximately 33% of the Gross Settlement
21 Amount and litigation Costs not to exceed \$25,000.00. Attorney's fees and costs
22 will be paid from the Settlement Amount.
- 23 ● Class Counsel will apply for, and Defendant will not oppose, an enhancement
24 payment of \$7,500.00 to Plaintiff. The enhancement payment will be paid out of
25 the Settlement Amount.
- 26 ● Defendant has agreed to pay \$20,000 as PAGA penalties, seventy-five percent
27 (75%) or \$15,000.00 of which will be paid to the LWDA and twenty-five percent
28

(25%) or \$5,000.00 of which will be distributed, on a pro-rata basis, to PAGA Group Members. The PAGA penalties will be paid out of the Settlement Amount.

- Defendant estimated that the class consists of approximately 37,446 Eligible Workweeks as of May 14, 2021 and this estimate served as the basis for Plaintiff accepting the Settlement. Should the number of Eligible Workweeks increase by more than 10%, Defendant agrees to increase the Net Settlement Amount proportionately over the 10% threshold.

Settlement Agreement and Accompanying Documents

8. Attached hereto as Exhibit "1" is the Settlement Agreement. Attached to the Settlement Agreement, as Exhibit "A," is the proposed Notice of Class Action and Proposed Resolution ("Class Notice") and, as Exhibit "B," is the proposed Workweek Dispute Form (collectively, referred to as "Notice Packet") to be distributed to Class Members in English and Spanish. A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." California Rules of Court 3.769(f). The proposed Class Notice satisfies these requirements.

9. The Parties respectfully request that this Court approve the above-referenced Notice Packet and dissemination of the same to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. That is, pursuant to the terms of the Settlement Agreement, within 7 calendar days after entry of the Order Granting Preliminary Approval of Class Action Settlement (which proposed order is attached as Exhibit "C" to the Settlement Agreement), Defendant shall deliver to the agreed upon Claims Administrator the Class List and then 14 calendar days thereafter, the Notice Packets are to be mailed by the Claims Administrator to Class Members via first-class U.S. Mail. The parties have agreed to use CPT Group, Inc. ("CPT"), an experienced settlement administrator, to administer the settlement. The administration costs will be paid out of the Settlement Amount. It is requested that the Court appoint CPT to serve as the Claims Administrator.

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The Settlement Was Negotiated at Arms Length and Not Collusive

10. The settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel. The settlement was reached after extensive factual and legal investigation and research, numerous discussions, exchanges of documents and information, correspondence, and a full day of mediation. The settlement amount is, of course, a compromise figure. It took into account the risks related to liability, damages and all the defenses asserted by Defendant.

11. Plaintiff asserts that the wage and hour claims and the claims for resulting penalties would be certified. Plaintiff's counsel reviewed documents produced by Defendant, including but not limited to CBAs and relevant policies on timekeeping, meal periods, payment of wages; sampling of time and payroll records for Class Members; time and payroll records for Plaintiff; and based thereon reasonably believed that Plaintiff would have a significant chance of certifying the class for the claims asserted in the Litigation.

12. On the other hand, Defendant has argued that Plaintiff cannot meet the requirements of class certification. In particular, Defendant believed that Plaintiff's would face difficulty in certifying the class as to unpaid wage claims and meal period claims. Defendant claimed they maintained compliant meal period policies and that meal periods were provided, and it did not deter employees from taking meal periods. Defendant also claimed that it payed employees correctly for all hours worked and issued compliant wage statements. Defendant also contends that class certification would not be warranted because individual liability issues predominate Plaintiff's claims and that there are preemption arguments under the CBAs.

13. While Plaintiff believes in his chance of success of certifying the claims, Plaintiff recognized the potential risk, expense and complexity posed by further litigation. Litigating Plaintiff's claims in this Litigation— claims that involve approximately 455 Class Members during the Class Period— would require substantial additional preparation and discovery and ultimately would involve the deposition and presentation of numerous witnesses (including expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side.

14. Again, Plaintiff and Defendant have very strong positions on liability in this case. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in Plaintiff's operative complaint, and further denies that, for any purpose other than that of settling this lawsuit, this action is appropriate for class treatment. In light of the sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits to Class Members under the Settlement Agreement, the terms and conditions of this class settlement are fair and reasonable to all sides.

The Settlement Amount is Well Within Range of Reasonableness

15. The settlement amount reached in this case provides significant recovery to participating Class Members and easily falls within the range of reasonableness.

Unpaid Wage Claims: Plaintiff on behalf of himself and similarly situated employees alleges that Defendant failed to pay all of its employees for all hours worked by unevenly rounding down the actual time worked. Based on the time records produced by Defendant for the sampling of employees and Plaintiff, it was determined that on average Defendant was shaving 5.6 or .093 minutes of time per day. It was also determined that 56% of the shifts employees worked shifts greater than eight hours.

$189,766$ (estimated number of shifts worked during the class period) $\times$ $.56$ (56% shifts worked over 8 hours) $= 106,269 \times .093$ (minutes shaved per day) $= 9,883 \times \$27.41$ (\$18.27 average hourly rate $\times 1.5$) $= \$270,893.03$.

$189,766$ (estimated number of shifts worked during the class period) $\times$ $.44$ (44% shifts worked less than 8 hours) $= 83,497.04 \times .093$ (minutes shaved per day) $= 7,765.22 \times \$9.79$ (average minimum wage) $= 76,021.50$.

Therefore, the total exposure for Plaintiff's uneven rounding claim would equal **\$346,914.53**. However, Defendant claimed that its rounding practice was neutral and lawful and that the claim would not be suitable for class treatment since it would call for individualized inquiry as to determining whether employees were working when clocked in early. Further, Defendant argued that the overtime claim would be subject to CBA preemption and liquidated damages would not be warranted. Plaintiff argued that employees were under the control of

1 Defendant and therefore must be compensated for all time worked. *Morrillion v. Royal Packing*
2 *Co.* (2000) 22 Cal.4th 575. Plaintiff also argued that Defendant's rounding practice was unlawful
3 as it overwhelmingly deprived employees in the aggregate of wages. *See's Candy Shops, Inc. v.*
4 *Sup. Ct.* (2012) 210 Cal.App4th 889. These legal issues were hotly contested between the Parties.

5 Recovery of Meal Break Premiums:

6 The time records for Plaintiff and the sampling of employees demonstrate that 62% of the
7 shifts there was no record of a meal break with an auto-deduct of 30 minutes and 38% of the shifts
8 there were no record of a meal break with no auto-deduct of 30 minutes. Plaintiff contends that
9 this equates to a 100% violation rate.

10 189,766 (number of shifts when an employee would have been entitled to a first meal break
11 during the class period) x .62 (62% of shifts there were no record of a meal break with an auto-
12 deduct) = 117,655 x .56 (56% shifts worked over 8 hours) = 65,887 x \$18.27 (average hourly rate)
13 = \$1,203,755.49

14 189,766 (number of shifts when an employee would have been entitled to a first meal break
15 during the class period) x .38 (38% of shifts there were no record of a meal break with no auto
16 deduct) = 72,111 x .44 (44% shifts worked less than 8 hours) = 31,729 x \$18.27 = \$579,688.83

17 Therefore, the total exposure for Plaintiff's meal period claim would equal \$1,783,444.32.

18 However, Defendant contends that it maintained compliant meal period policies and provided
19 employees the opportunity to take meal periods. Defendant also argued that Plaintiff's auto-deduct
20 theory would require individualized inquiry and therefore is not suitable for class treatment.

21 Plaintiff argued that non-exempt employees were not provided the opportunity to take meal periods
22 as they were discouraged from taking the same, which is evidenced from the time records. An
23 employer may not undermine a formal policy of providing meal breaks by pressuring employees to
24 perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.* (2005) 133
25 Cal.App. 949, 962-963. Please also see *Jaimez v. DAIOWS USA, Inc.* (2011) 181 Cal.App.4th
26 1286, 1304-1305-[proof of common scheduling policy that made taking breaks extremely difficult
27 would show violation]; *Dilts v. Penske Logistics, LLC* (S.D. Cal.2010) 267 F.R.D. 625,

638-[indicating that an informal anti-meal-beak policy enforced through ridicule or reprimand would be illegal]. These legal issues were hotly contested between the Parties.

Wage Statement Penalties: The wage statement claim is a derivative claim from the alleged unpaid wages. There are approximately 313 Class Members who worked during the one year statute of limitation for wage statement violations. 313 number of non-exempt employees worked during 1 year SOL for Labor Code §226 x \$4,000 maximum aggregate penalty. This equates to an estimated exposure of \$1,252,000. However, Defendant claims that it issued compliant and accurate wage statements since it paid all earned wages to its non-exempt employees and that this claim would not be suitable for class treatment as it would call for individualized inquiry for the derivative unpaid wage claims.

Waiting Time Penalties: The failure to pay all earned wages upon termination/resignation is a derivative claim from the alleged unpaid wages. There are approximately 93 former employees who fall within the three year liability period for this claim. 93 (total number of former class members during the 3 year SOL for Labor Code §203) x \$4,384.80 ($\$18.27 \times 8 = \146.16×30 days = \$4,384.80). This equates to an estimated exposure of \$407,786.40. However, Defendant claimed that they paid all wages to non-exempt employees and that this claim would not be suitable for class treatment as it would call for individualized inquiry for the derivative unpaid wage claims. Defendant's also argued that the Labor Code requires that there be a wilful showing that the employer knew of its obligation and intentionally refused to act.

PAGA Penalties - There are approximately 15,941 pay periods during the relevant liability period for this claim. The first pay period the PAGA penalty is \$100.00 and the subsequent pay periods the PAGA penalty is \$200.00 per pay period. For purposes of mediation only, Plaintiff calculated PAGA penalties based on \$100.00 per pay period, per violation. $\$500 \times 15,941 = \$7,970,500$. Thus, the PAGA penalty exposure is estimated at \$7,970,500. However, Defendant claimed that it properly paid employees wages for all hours worked and provided meal periods and therefore it complied with the Labor Code. In other words, Defendant argued that they complied with the Labor Code and thus there would be no underlying Labor Code violations, per pay period. Defendant further argued that the Court had discretion to lower PAGA penalties where appropriate.

1 16. Plaintiff's counsel obtained a Settlement Amount of \$750,000. Class Counsel
2 considers this to be an excellent settlement for Class Members, when taking into account all issues
3 and risks related to liability and class certification and considering the case law regarding fair,
4 reasonable, and adequate settlements. *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117,
5 1139 ["Compromise is inherent and necessary in the settlement process. . .even if the relief
6 afforded by the proposed settlement is substantially narrower than it would be if the suits were to
7 be successfully litigated, this is no bar to a class settlement because the public interest may indeed
8 be served by a voluntary settlement in which each side gives ground in the interest in avoiding
9 litigation."]; *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 628 ["It is
10 well-settled law that a cash settlement amounting to only a fraction of the potential recovery does
11 not. . .render the settlement inadequate or unfair."].

12 **The Proposed Attorney's Fees and Costs are Reasonable**

13 17. Class Counsel seeks an attorney's fee award of \$250,000, which is approximately
14 33% of the Settlement Amount, and costs not to exceed \$25,000. The requested fee falls well
15 within the historical range of attorney's fee awards under the common fund theory, which is
16 generally from 20% to 50%. The requested fee is fair compensation for undertaking complex,
17 risky, expensive, and time-consuming litigation on a contingent fee basis. This case was litigated,
18 investigated, and extensive research was conducted.

19 18. Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
20 associated with this class action on a pure contingency basis. The factual and legal issues posed in
21 this case were evolving and difficult. Based on Class Counsel's past experience in wage and hour
22 class action litigation, it is safe to state that Class Counsel is very likely to be called upon, after the
23 Class Notice has been sent, to expend substantial amounts of additional time to help Class
24 Members understand the terms of the proposed settlement, and to assist Class Members in the
25 preparation and documentation of their claims. It is also likely that, even after final approval of the
26 settlement has been granted, Class Counsel will be called upon to a expend additional amounts of
27 time in the presentation and resolution of contests and disputes relating to Class Members' claims
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1 under the terms of the proposed settlement, as to the amounts of individual claims and perhaps
2 other individual issues.

3 19. The Court should preliminarily approve the requested attorney's fees and costs,
4 which are justified by the outstanding results achieved, the complexity of the issues, the difficulty
5 of the case, and the great risk undertaken by Class Counsel. The requested attorney's fees will not
6 be opposed by Defendant, and are well within established guidelines.

7 20. I graduated from UCI with a B.A. in Political Science in 1998. Thereafter I
8 attended University of West Los Angeles School of Law and graduated in 2006. I became a
9 member of the California State Bar in March 2009. In February 2009, I became an associate at
10 Kokozyan & Nourmand LLP and thereafter in June 2010 I became an associate at The Nourmand
11 Law Firm, APC. I exclusively represent employees in the area of employment law, wage and hour
12 litigation on an individual and class wide basis. I am admitted to practice in all state courts in
13 California, the United States District Courts of California - Central District, and Ninth Circuit
14 Court of Appeal. I am also an active member of the California Employment Lawyer's Association
15 ("CELA") and have been selected to Rising Stars by Super Lawyers in 2012, 2015-2019 and
16 selected to Super Lawyers in 2020-2021.

17 21. Michael Nourmand, the principal at the Nourmand Law Firm, APC graduated from
18 UCLA with a B.A. in Political Science (Cum Laude) in 1994. Thereafter Mr. Nourmand attended
19 Loyal Law school and graduated in May of 1998. Mr. Nourmand became a member of the
20 California State Bar in December 1998. In September 1999, Mr. Nourmand along with his former
21 business partner Bruce Kokozyan, started the law firm of Kokozyan & Nourmand LLP and began to
22 represent plaintiffs in the area of personal injury, insurance bad-faith, employment law, wage and
23 hour, and class actions. In June 2010, Mr. Nourmand dissolved his partnership at Kokozyan &
24 Nourmand LLP and started The Nourmand Law Firm, APC exclusively representing plaintiffs in
25 the areas of employment law, wage and hour, and class actions. Prior to starting his own law firm,
26 Mr. Nourmand worked for a plaintiff's law firm, Rose, Klein & Marias, Law Offices of Gary
27 Bostwick and externed at the U.S. Attorney's Office, Civil Fraud Division and U.S. Bankruptcy
28 Court, Honorable Judge Barry Russell. Mr. Nourmand is admitted to practice in all state courts in

1 California, the United States District Courts of California - Central District, Southern District and
2 the United Supreme Court. In July 2011 Mr. Nourmand was selected as one of 75 Top Labor &
3 Employment Lawyers in California by the Daily Journal; in 2011 and 2012 Mr. Nourmand was
4 selected as a Rising Star by Super Lawyers and in 2013 Mr. Nourmand was selected as a Super
5 Lawyer by Super Lawyers. Mr. Nourmand is also an active member of the California Employment
6 Lawyer's Association ("CELA"), Consumer Attorneys of California ("CAOC"), National
7 Employment Lawyer's Association ("NELA"), Consumer Attorneys Association of Los Angeles
8 ("CAALA"), California State Bar, Labor and Employment Section, and the Los Angeles County
9 Bar.

10 22. The Nourmand Law Firm, APC has been approved to act as lead or co-counsel on
11 numerous class action cases, including the following:

- 12 (a.) Superior Court of the State of California, County of Los Angeles, Spring
13 Street Courthouse, *Reid v. Cardinal Glass Industries, Inc., et al.*, Case No.
BC633874.
- 14 (b.) Superior Court of the State of California, County of San Joaquin, *Azpeitia,*
15 *et al. v. The Newark Group, Inc.*, Case No. STK-CV-UOE-2016-0012282.
- 16 (c.) Superior Court of the State of California, County of Los Angeles, Spring
17 Street Courthouse, *Turner, et al. v. Providence Little Company of Mary*
18 *Foundation, et al.*, Case No. BC676996.
- 19 (d.) Superior Court of the State of California, County of Kern, *Garza v. Frito-*
20 *Lay, Inc.*, Case No. CV-16-102730 D.L.
- 21 (e.) Superior Court of the State of California, County of Los Angeles, Spring
22 Street Courthouse, *Winters v. The Dependable Companies, et al.*, Case No.
BC623839.
- 23 (f.) Superior Court of the State of California, County of Los Angeles, Spring
24 Street Courthouse, *Barretos v. Don Roberto Jewelers, Inc.*, Case No.
BC495451.
- 25 (g.) Superior Court of the State of California, Ventura County, *Morales, et al. v.*
26 *Southland Sod Farms Operations, Inc., et al.*, Case No. 56-2017-00496912-
CU-OE-V.A.
- 27 (h.) Superior Court of the State of California, Los Angeles County, Spring Street
28 Courthouse, *Castrejon, et al. v. Karen Kane, Inc., et al.*, Case Nos.
BC537058 and BC569548.
- (i.) United States District Court, Central District of California, *Balderas v. SPS*
Technologies, LLC, Case No. 2:14-cv-4036-CAS (VBKx).
- (j.) Superior Court of the State of California, County of Los Angeles, Spring
Street Courthouse, *Levkovitch v. Premier Displays & Exhibits, Inc.*, Case
No. BC628412.
- (k.) Superior Court of the State of California, County of Los Angeles, Spring
Street Courthouse, *Pena v. National Diversified Sales, Inc., et al.*, Case No.
BC610019.
- (l.) Superior Court of the State of California, County of Los Angeles, Central
Civil West, *Cortez v. Darling International, Inc.*, Case No. BC525091.
- (m.) Superior Court of the State of California, County of Los Angeles, Spring

- 1 Street Courthouse, *Lopez v. Owens & Minor Distribution, Inc.*, Case No.
2 BC613671.
3 (n.) Superior Court of the State of California, County of Los Angeles, Spring
4 Street Courthouse, *Starks, et al. v. Mercury Air Cargo, Inc., et al.*, Case No.
5 BC614067.
6 (o.) Superior Court of the State of California, County of Los Angeles, Spring
7 Street Courthouse, *Calvo v. Craneveyor Corp, et al.*, Case No. BC634012.
8 (p.) Superior Court of the State of California, County of Los Angeles, Spring
9 Street Courthouse, *Alvarez v. Norman's Nursery, Inc.*, Case No. BC592465.
10 (q.) Superior Court of the State of California, County of Los Angeles, Central
11 Civil West, *Corlew v. Ferrellgas, Inc., et al.*, Case No. BC521730.
12 (r.) Superior Court of the State of California, County of Los Angeles, Spring
13 Street Courthouse, *Vela v. Doorking, Inc.*, Case No. BC644377.
14 (s.) Superior Court of the State of California, County of Los Angeles, Spring
15 Street Courthouse, *Shasheet, et al. v. Pacifica Hotel Company, et al.*, Case
16 No. 603264 and BC635444.
17 (t.) Superior Court of the State of California, County of Los Angeles, Central
18 Civil West, *Kim, et al. v. Beverly Hills Properties, Inc., et al.*, Case No.
19 BC503462 and BC520587.
20 (u.) Superior Court of the State of California, County of Los Angeles, Central
21 Civil West, *Benitez, et al. v. Aircraft Service International, Inc.*, Case No.
22 BC534264.
23 (v.) Superior Court of the State of California, County of Los Angeles, Central
24 Civil West, *Santoyo v. Consolidated Foundries, Inc., et al.*, Case No.
25 BC612298.
26 (w.) Superior Court of the State of California, County of Los Angeles, Central
27 Civil West, *Carreon v. Jonathan Louis International, LTD*, Case No.
28 BC543678.
(x.) Superior Court of the State of California, County of Los Angeles, Spring
Street Courthouse, *Garcia, et al. v. American International Industries*, Case
No. BC560886.
(y.) Superior Court of the State of California, County of Los Angeles, Central
Civil West, *Badios, et al. v. E.M. Pizza, Inc.*, Case No. BC495252.

23. Accordingly, The Nourmand Law Firm, APC has the experience, resources, and means necessary to allow us to provide adequate representation as Class Counsel to all Class Members in this Litigation. Currently, our firm is acting as lead counsel in over thirty other wage and hour class actions.

The Proposed Enhancement Award to Plaintiffs as Class Representatives is Reasonable

24. Plaintiff is entitled to an enhanced award for his services as class representatives and risk in being the Plaintiff, not to mention that Plaintiff will be providing Defendant a general release of claims in exchange for the enhancement award. Defendant does not oppose the requested enhancement to Plaintiff. Class Counsel can attest that Plaintiff devoted a great deal of time and work assisting counsel in this case, communicated with counsel very frequently, and were

1 a very valuable participant in the strategy for and success of the mediation. Plaintiff risked
2 intrusive discovery and the payment of employer costs. Plaintiff will provide a declaration at the
3 time of final approval detailing his efforts as the class representative. Class Counsel seeks an
4 enhancement of \$7,500.00 for Plaintiff for his service.

5 **Class Certification**

6 **Numerosity & Ascertainability**

7 25. California law requires the class to be so numerous that
8 utilization of the class action procedure will inure to the benefit of the judicial system. *Richmond*
9 *v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470. The Defendant identified potential class members
10 from its time and payroll records and upon final preliminary approval has agreed to provide the
11 Class List to the Claims Administrator. Defendant identified a total of approximately 455 Class
12 Members. This number exceeds the minimum number of individuals required to meet the
13 numerosity requirement.

14 **Commonality**

15 26. Here, common issues, without limitation, include whether Defendant violated
16 applicable wage laws, i.e., failed to pay its non-exempt employees minimum and overtime wages,
17 failed to provide meal periods, failed to provide compliant wage statements, failed to timely pay all
18 earned wages to terminated and/or resigned employees, etc. Because there are common issues, this
19 requirement is satisfied for purposes of settlement.

20 **Typicality**

21 27. Typicality requires only that the named plaintiff's interests in the action be
22 significantly similar to those of other class members. *Richmond*, 29 Cal.3d at 74-75. A
23 representative plaintiff's claims are typical if they arise from the same event, practice, or course of
24 conduct that gives rise to the claims of other class members, and if his or her claims are based on
25 the same legal theories. *Miller v. Woods* (1983) 16 Cal.App.3d 862, 874. Indeed, when the same
26 underlying conduct affects the named plaintiffs and the class sought to be represented, the
27 typicality requirement is met irrespective of any varying fact patterns that may underlie individual
28

1 claims. *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473 - named plaintiff's
2 interests must only be significantly similar to other class members.

3 28. In this case, Plaintiff's claims are precisely the same as those of the class he seeks to
4 represent: like other members of the Class, he was employed by Defendant during the relevant time
5 period, performed similar duties for Defendant, and Defendant's policies were uniformly applied to
6 its employees.

7 Adequacy of Representation

8 29. No conflicts, disabling or otherwise, exist between the Class Representative and
9 Class Members because the Plaintiff has allegedly been damaged by the same alleged conduct and
10 has the incentive to fairly represent all Class Members' claims to achieve the maximum possible
11 recovery. Indeed, the Class Representative stands in the same shoes as the Class Members with the
12 same incentive to maximize the overall recovery. *Richmond*, 29 Cal.3d at 473; *Harrison v. Bd. of*
13 *Supervisors* (1975) 44 Cal.App.3d 852, 863.

14 30. Class Counsel are experienced class action attorneys, have been appointed as class
15 counsel in numerous class actions, and have a successful track record in litigating class actions.
16 After a thorough investigation and settlement discussions, the parties arrived at terms that they
17 viewed was in the best interest of both the Class Members and the parties.

18 31. Plaintiff's goals have been realized to have redress for the employees whose wage
19 and hour rights were violated. While Defendant denies liability, it has nonetheless agreed to settle
20 the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of
21 this Settlement, many of the Class Members may be denied any recourse for Defendants' alleged
22 violations.

23 Superiority of Class Action

24 32. Also relevant to the Court's certification decision is whether a class action is the
25 superior method of adjudication. *Schneider* 183 Cal.App.3d at 1347. The California Supreme
26 Court has "repeatedly emphasized the importance of the class action device for vindicating the
27 rights asserted by large groups of persons." *Keating v. Sup. Ct.* (1982) 31 Cal.3d at 469
28 (recognizing that class actions are useful for fashioning effective and inclusive group remedy).

1 The class device is even more appropriate to adjudicate the rights of large numbers of similarly
2 situated victims who lack the sophistication, financial wherewithal, or individual incentive to sue
3 on their own. For example, in *Vasquez v. Sup. Ct.*, the California Supreme Court emphasized that
4 “[i]ndividual actions by each of the defrauded consumers is often impracticable because the
5 amount of individual recovery would be insufficient to justify bringing a separate action; thus an
6 unscrupulous seller retains the benefits of its wrongful conduct.” *Vasquez* 4 Cal.3d at 808. The
7 Court in *Vasquez* also recognized several other benefits of class action treatment:

8 A class action by consumers produces several salutary byproducts, including a
9 therapeutic effect upon those sellers who indulge in fraudulent practices, aid to
10 legitimate business enterprises by curtailing illegitimate competition, and avoidance
11 to the judicial process of the burden of multiple litigation involving identical claims.
Id. State v. Levi Straus & Co. (1986) 41 Cal.3d 460, 471 - noting that consumer
class actions are “an essential tool for the protection of consumers against
exploitative business practices”.

12 33. This case is no exception. Given the size of the potential individual recovery, it
13 would be impracticable to bring each Class Member’s claim as an individual claim.

14 34. Accordingly, the Class meets all criteria for certification and should be certified for
15 purposes of effectuating this settlement. *Hogya v. Sup. Ct.* (1977) 75 Cal.App.3d 122 - if the
16 action satisfies the statutory criteria, the court must certify the class; *Dunk* 48 Cal.App.4th at 1807
17 n. 19 - a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes
18 and courts should take settlement into account in evaluating class certification; *Amchen Products,*
19 *Inc. v. Windsor* (1977) 521 U.S. 591, 620 - because the Court is certifying this action for settlement
20 purposes only, it need not determine whether the class would be manageable for litigation
21 purposes.

22
23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct this 9th day of June 2022.

25
26 
27 James A. De Sario
28

EXHIBIT 1

1 Christine D. Baran (SBN 158603)
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7 Attorneys for Defendant
8 LOS ALAMITOS RACE COURSE

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10 THE NOURMAND LAW FIRM, APC
11 8822 West Olympic Boulevard
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Attorneys for Plaintiff
13 ELBERT MCCRAY, on behalf of himself
14 and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ORANGE**
17

18 ELBERT MCCRAY, on behalf of himself
19 and all others similarly situated,

20 Plaintiffs,

21 v.

22 LOS ALAMITOS RACE COURSE, A
California corporation; and DOES 1
23 through 100, Inclusive,

24 Defendants.
25

CASE NO.: 30-2020-01131139-CU-OE-CXC
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Randall Sherman, Dept. CX105*

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: August 4, 2020
FAC Filed: August 4, 2020
Trial Date: None Set

1 This Stipulation of Class Action Settlement and Release ("Stipulation," "Stipulation of
2 Resolution" or "Agreement") is made by and between the Plaintiff ELBERT MCCRAY
3 ("Named Plaintiff" or "Class Representative"), on his own behalf and on behalf of all members
4 of the Settlement Class, as defined below, on the one hand, and LOS ALAMITOS RACE
5 COURSE ("Defendant") on the other hand (collectively the "Parties"). This Agreement resolves
6 all claims that were asserted or could have been asserted against Defendant pertaining to the
7 claims in Orange County Superior Court Case Number 30-2020-01131139-CU-OE-CXC
8 entitled above (hereinafter the "Action," "Complaint" or "Litigation").

9 **I. DEFINITIONS**

10 A. **Action.** "Action," "Complaint," "Class Action Complaint," or "Litigation"
11 means the class action complaint filed in Orange County Superior Court, case number 30-2020-
12 01131139-CU-OE-CXC.

13 B. **Administrative Costs.** All administrative costs of settlement, including cost of
14 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
15 by the Settlement Administrator in connection with the execution of its duties under this
16 Agreement.

17 C. **Agreement.** The term "Agreement," "Settlement Agreement," "Stipulation," or
18 "Stipulation of Resolution" are used synonymously herein to mean this Stipulation of Class
19 Action Settlement and Release for purposes of resolving the Action.

20 D. **Claims Administrator.** "Claims Administrator" or "Settlement Administrator"
21 means the third-party entity CPT Group, Inc. jointly selected by the Parties to provide notice
22 to the Class and perform other duties relating to the administration of this Agreement, including,
23 but not limited to, providing notice to the class members and distribution of the Net Settlement
24 Payments to Participating Class Members.

25 E. **Class Counsel.** The term "Class Counsel" as used herein means Michael
26 Nourmand and James A. De Sario of THE NOURMAND LAW FIRM, APC who are counsel
27 for and acting on behalf of Named Plaintiff and the Settlement Class. The term Class Counsel
28 shall be used synonymously with the term Plaintiff's Counsel.

1 **F. Class Period.** The term "Class Period" or "Settlement Period" shall refer to the
2 time period from February 10, 2016 to September 16, 2021.

3 **G. Class Action Complaint.** The term "Class Action Complaint" as used herein
4 means the First Amended Class Action Complaint filed by Plaintiff on or around August 4, 2020
5 and/or the governing Complaint in the Action.

6 **H. Court.** The term "Court" as used herein means the Superior Court of the State
7 of California for the County of Orange.

8 **I. Defendant's Counsel.** "Defendant's Counsel" means Christine Baran, Boris
9 Sorsher, and Bret Martin, Fisher & Phillips, LLP, 2050 Main Street, Suite 100, Irvine, California
10 92614, telephone (949) 851-2424.

11 **J. Effective Date.** The term final shall mean the first business day upon which the
12 last of the following have occurred:

13 a. If Settlement Class Members have not filed objections, or if they have filed
14 objections but the objections have been withdrawn, the Effective Date shall
15 be upon entry of the Final Judgment in this Action after the Court has granted
16 final approval of the Settlement, and a file stamped copy of the Final
17 Judgment with a proof of service has been served on all parties by Class
18 Counsel, or

19 b. If Settlement Class Members have filed objections that have not been
20 withdrawn, either (1) the time to appeal, object or attack the Court's entry of
21 Final Judgment has expired and there has been no appeal, objection or attack;
22 or (2) the court of last resort to which any appeal is taken has affirmed its
23 entry of Final Judgment in its entirety or the Settlement Class Member has
24 presented a petition for review and the affirmance is no longer subject to
25 further appeal or review, and no further challenge to the entry of Final
26 Judgment is possible.

27 **K. Date of Final Approval.** The terms "Date of Final Approval" or "Final
28 Approval" as used herein mean the date of the Final Fairness and Approval Hearing.

1 **L. Defendant.** The term "Defendant" as used herein means: LOS ALAMITOS
2 RACE COURSE.

3 **M. Eligible Workweek.** The term "Eligible Workweek" or "Workweek" as used
4 herein means any calendar week during the Class Period and PAGA Period during which a
5 Settlement Class Member performed work for Defendant on at least one calendar day.

6 **N. Employer Taxes.** Employer-funded taxes and contributions imposed on the
7 wage portions of the Settlement Payment under the Federal Insurance Contributions Act, the
8 Federal Unemployment Tax Act, and any similar state taxes and contributions required of
9 employers, such as for unemployment insurance. All Employer Taxes shall be paid by
10 Defendant separately and in addition to the Settlement Amount.

11 **O. Final Judgment.** The term "Final Judgment" as used herein means Final
12 Judgment entered by the Court following the Final Approval Hearing, substantially in the form
13 attached hereto as Exhibit "D".

14 **P. Named Plaintiff.** The term "Named Plaintiff" as used herein means ELBERT
15 MCCRAY. The term Named Plaintiff shall be used synonymously with the term Class
16 Representative.

17 **Q. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
18 means the Settlement Amount minus any award of attorneys' fees and Litigation costs,
19 Administrative Costs, enhancement to the Named Plaintiff, seventy-five percent (75%) of
20 penalties payable to the California Labor and Workforce Development Agency (the "LWDA")
21 pursuant to California's Private Attorney General Act ("PAGA") ("PAGA Settlement"), and as
22 provided in Sections XIII, VIII, XIV, XV, and XVI, respectively.

23 **R. Net Settlement Payments.** The term "Net Settlement Payment(s)" or "Claim
24 Amount" shall include payments made to the Participating Class Members and PAGA Group
25 Members as part of this Agreement, including wages, penalties and interest.

26 **S. Objection/Opt Out Deadline.** The term "Objection/Opt Out Deadline" as used
27 herein means the deadline for Settlement Class Members to object to the Settlement or request
28

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1 to be excluded from the Settlement, which shall be forty-five (45) days after the mailing of the
2 Notice by the Settlement Administrator.

3 **T. "PAGA" means the California Attorneys General Act of 2004, which is**
4 **codified in California Labor Code §2698, et seq.**

5 **U. "PAGA Group Member(s)" means Plaintiff and all current and former hourly**
6 **non-exempt employees of Defendant within California at any time during the PAGA Period.**

7 **V. "PAGA Period" means the period from February 10, 2019 to September 16,**
8 **2021.**

9 **W. "PAGA Settlement Amount" means the portion of the Settlement Amount**
10 **allocated to the resolution of Class Members' claims arising under PAGA. The Parties have**
11 **agreed that the PAGA Settlement Amount is Twenty Thousand Dollars and Zero Cents**
12 **(\$20,000), subject to Court approval. Of the PAGA Settlement Amount, 75% or Fifteen**
13 **Thousand Dollars and Zero Cents (\$15,000) will be paid to the LWDA ("LWDA Payment"),**
14 **and the remaining 25% or Five Thousand Dollars and Zero Cents (\$5,000) will be distributed**
15 **to PAGA Group Members.**

16 **X. Participating Class Member. The term "Participating Class Member" or**
17 **"Participating Class Members" as used herein means any member or members of the Settlement**
18 **Class who does not timely and validly request to be excluded from the Settlement.**

19 **Y. Preliminary Approval. The term "Preliminary Approval" as used herein means**
20 **the date on which the Court signs the Preliminary Approval Order and grants preliminary**
21 **approval of this Agreement.**

22 **Z. Preliminary Approval Order. The term "Preliminary Approval Order" as used**
23 **herein means the order entered by the Court granting preliminary approval of this Agreement,**
24 **substantially in the form attached hereto as Exhibit "C".**

25 **AA. Settlement Amount. The terms "Settlement Amount" and "Gross Settlement**
26 **Fund" as used herein mean a fund in the sum of Seven Hundred Fifty Thousand Dollars and**
27 **Zero Cents (\$750,000.00) which shall be paid by Defendant, and from which all Net Settlement**
28 **Payments, Court approved attorneys' fees and Litigation costs pursuant to Section XIII,**

1 Administrative Costs pursuant to Section VIII, enhancement to the Named Plaintiff pursuant to
2 Section XIV, statutory penalties, interest, and PAGA penalties pursuant to Section XVI shall be
3 paid, except as provided herein. The Settlement shall be an “all in” settlement and shall not
4 provide for a reversion.

5 **BB. Settlement Class.** For settlement purposes only, the Parties agree to the
6 certification of a Settlement Class pursuant to California Code of Civil Procedure section 382
7 defined as: “All non-exempt hourly employees of Defendant who performed work in the State
8 of California at any time during the Class Period, who have not already released claims through
9 a separate individual agreement or are not covered by any prior court approved class action
10 settlement.”

11 **CC. Settlement Class Member.** The terms “Settlement Class Member” or
12 “Settlement Class Members” as used herein means any member or members of the Settlement
13 Class.

14 **II. BACKGROUND**

15 **A.** On February 10, 2020, Named Plaintiff filed a putative class action complaint on
16 behalf of himself and all others similarly situated against Defendant alleging the following
17 causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages;
18 (3) Failure to Provide Meal Periods; (4) Failure to Pay All Wages Upon Termination; (5) Failure
19 to Provide Accurate Wage Statements; and (6) Unfair Competition. On or around August 4,
20 2020, Named Plaintiff filed an amended complaint adding a seventh cause of action under
21 PAGA. In the Litigation, Named Plaintiff alleges that Defendant violated California state wage
22 and hour laws, the California Business and Professions Code Section 17200 *et seq.*, and PAGA,
23 as a result of Defendant’s wage and hour policies and practices. Specifically, Named Plaintiff
24 alleges that Defendant failed to pay all minimum wages and overtime wages as a result of an
25 allegedly unlawful practice of “rounding” hours worked, and failed to provide meal breaks.
26 Named Plaintiff alleges that the aforementioned conduct resulted in the employees receiving
27 inaccurate wage statements and the underpayment of wages to employees upon termination
28 and/or resignation.

1 Following the filing of the Class Action Complaint, counsel for the Parties met and
2 conferred with respect to the potential settlement of the Litigation. Pursuant to these discussions,
3 the Parties agreed to exchange informal discovery and engage in private mediation. The Parties
4 subsequently exchanged informal discovery, including: a substantial sampling of the
5 timekeeping and payroll records of the Settlement Class; information and documentation
6 concerning the claims set forth in the Litigation, such as Defendant's employment policies and
7 procedures regarding the payment of wages, meal and rest breaks, timekeeping; applicable
8 collective bargaining agreements; information regarding the number of putative class members
9 and the number of current versus former employees; the total Workweeks worked by the
10 Settlement Class; the total pay periods during the PAGA period; and the average rate of pay for
11 the Settlement Class.

12 B. Named Plaintiff, Class Counsel, Defendant and Defendant's Counsel have
13 engaged in good faith, arms-length negotiations. On June 3, 2021, the Parties participated in a
14 mediation before Marc Feder. The mediation resulted in a mediator's proposal which the Parties
15 accepted on June 18, 2021. Through the proposal, the Parties reached a resolution of this matter,
16 subject to the approval of the Court, and finalization of a formal Stipulation of Class Action
17 Settlement and Release. The Parties have now entered into a more detailed, formalized
18 Settlement Agreement for submission to the Court for Preliminary and Final Approval.

19 C. Class Counsel conducted an investigation of the law and facts relating to the
20 claims asserted in the Litigation and concluded, taking into account the sharply contested issues
21 involved, the expense and time necessary to pursue the Litigation through trial and any appeals,
22 the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the
23 uncertainties of complex litigation, and the substantial benefits to be received by the Named
24 Plaintiff and the members of the Settlement Class pursuant to this Agreement, that a settlement
25 with Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in
26 the best interests of the Settlement Class. Named Plaintiff, on his own behalf and on behalf of
27 the Settlement Class, have agreed to settle the Litigation with Defendant on the terms set forth
28 herein.

1 D. Defendant concluded that, because of the substantial expense of defending
2 against the Litigation, the length of time necessary to resolve the issues presented herein, the
3 inconvenience involved, and the concomitant disruption to its business operations, that it is in
4 its best interests to accept the terms of this Agreement. Defendant denies each of the allegations
5 and claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle
6 the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing
7 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

8 E. This Agreement is intended to and does effectuate the full, final and complete
9 resolution of all allegations and claims that were asserted, or could have been asserted, in the
10 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

11 **III. JURISDICTION**

12 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
13 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
14 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
15 Final Approval of this Agreement and after the Court enters Final Judgment, pursuant to
16 California Code of Civil Procedure Section 664.6 the Court shall retain jurisdiction of this action
17 solely for the purpose of interpreting, implementing, and enforcing this Agreement consistent
18 with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the
19 Court for purposes of interpreting, implementing and enforcing this Agreement and all orders
20 and judgments entered in connection therewith.

21 **IV. STIPULATION OF CLASS CERTIFICATION**

22 The Parties stipulate to the certification of this Settlement Class for purposes of this
23 Agreement only. This Stipulation is contingent upon the Preliminary and Final Approval and
24 certification of the Settlement Class only for purposes of this Agreement. Should this Agreement
25 not become final, for whatever reason, the fact that the Parties were willing to stipulate
26 provisionally to class certification as part of the Agreement shall have no bearing on, and shall
27 not be admissible in connection with, the issue of whether a class should be certified in a non-
28 settlement context in the Litigation. Defendant expressly reserves the right to oppose class

1 certification should this Agreement be modified or reversed on appeal or otherwise not become
2 final.

3 **V. MOTION FOR PRELIMINARY APPROVAL**

4 Named Plaintiff will bring a motion for an order preliminarily approving this Agreement
5 including the Notice of Proposed Class Action Settlement, attached hereto as Exhibit "A", and
6 the Workweek Dispute Form, attached hereto as Exhibit "B". The date that the Court grants
7 Preliminary Approval of this Agreement will be the "Preliminary Approval Date." Class
8 Counsel will prepare the Motion for Preliminary Approval. Class Counsel will provide
9 Defendant's Counsel with a draft of the Motion for Preliminary Approval before submitting it
10 to the Court for approval.

11 **VI. STATEMENT OF NO ADMISSION**

12 A. Defendant denies liability to Named Plaintiff and to the Settlement Class upon
13 any claim or cause of action. This Agreement does not constitute, and is not intended to
14 constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the
15 allegations or claims made against it in the Litigation.

16 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
17 any statements, discussions or communications, nor any materials prepared, exchanged, issued
18 or used during the course of the negotiations leading to this Agreement, is intended by the Parties
19 to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
20 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum
21 or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
22 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
23 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
24 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding,
25 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
26 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
27 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before

28 ///

1 the Court that has as its purpose the interpretation, implementation, or enforcement of this
2 Agreement or any orders or judgments of the Court entered in connection with this Agreement.

3 C. None of the documents produced or created by Named Plaintiff or the Settlement
4 Class in connection with the claims procedures or claims resolution procedures constitute, and
5 they are not intended to constitute, an admission by Defendant of any violation of any federal,
6 state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
7 duty at law or in equity.

8 D. The Parties agree that class certification pursuant to California *Code of Civil*
9 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only.
10 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
11 that any class should be certified or given collective treatment in the Litigation or in any other
12 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this
13 Agreement will be admissible in any court or other tribunal regarding the propriety of class
14 certification or collective treatment. In the event that this Agreement is not approved by the
15 Judge or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff
16 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
17 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
18 way any of its objections or defenses in the Litigation.

19 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

20 **A. Release as to All Settlement Class Members.**

21 Upon the complete funding of the Settlement Amount, Named Plaintiff and all
22 Participating Class Members, will release any and all claims and causes of action, known or
23 unknown, contingent or accrued, against Defendant and its past or present parents, subsidiaries,
24 investors, owners (including but not limited to Dr. Edward Allred), affiliates (including but not
25 limited to Los Alamitos Quarter Horse Racing Association, Los Alamitos Racing Association,
26 and Los Alamitos Racecourse), and all of their respective members, officers, directors,
27 shareholders, managing agents, owners, general partners, limited partners, employees, servants,
28 consultants, agents, independent contractors, representatives, their insurers, reinsurers, and

1 attorneys, and all persons acting by, through, under or in concert with any of them, and each of
2 their respective heirs, successors, and assigns, and any individual or entity which could be
3 jointly liable with Defendants, arising out of the facts and claims asserted in the Litigation for
4 wage and hour violations, or any other claims or causes of action that could have reasonably
5 been asserted in the Litigation, based upon the facts alleged in the Litigation, whether under
6 common law, statute, or regulation, including unpaid wages (minimum, overtime and double
7 time wages), meal period claims and premiums, waiting time claims and associated penalties,
8 wage statement claims and associated penalties, failure to pay all wages owed every pay period,
9 unfair competition claims under Business & Professions Code section 17200, et al., damages
10 for restitution, liquidated damages, equitable relief, general damages, interest, costs and
11 attorneys' fees related to these claims ("Released Claims") at any time during the Class Period.
12 The above Released Claims do not include a Civil Code § 1542 waiver and general release on
13 behalf of the Participating Class Members and claims and damages that could not have
14 reasonably been alleged arising from the facts and claims alleged in the Litigation.

15 **B. Released PAGA Claims as to PAGA Group Members**

16 Released PAGA Claims means any and all claims for civil penalties under PAGA based
17 on the Labor Code violations alleged in or arising from the factual allegations in Plaintiff's
18 notice(s) sent to the LWDA and alleged in the Litigation, including attorneys' fees and costs
19 related thereto, that arose during the PAGA Period, regardless of whether PAGA Group
20 Members opt out from the Settlement Agreement.

21 **C. General Release by Named Plaintiff Only.**

22 In consideration for his enhancement payment, effective on the date of final approval of
23 this Agreement, in addition to the release made in Section VII(A), Named Plaintiff provides
24 Defendant with the following general release of all claims, known or unknown arising out of his
25 employment with Defendant. Named Plaintiff agrees to irrevocably and unconditionally release,
26 acquit and forever discharge Defendant, all its subsidiaries, parents, predecessors, successors,
27 investors, affiliates (including but not limited to Los Alamitos Quarter Horse Racing
28 Association), current and former employees, managing agents, servants, consultants, agents,

1 directors, members, officers, independent contractors, representatives, insurers and reinsurers
2 and attorneys (and the current and former servants, agents, employees, directors, officers,
3 members, independent contractors, representatives, consultants, insurers, reinsurers and
4 attorneys of any such subsidiaries, parents, predecessors, successors, or affiliates), and all
5 persons acting by, through, under and/or in concert with any of them, and each of their respective
6 heirs, successors, and assigns, or any of them, from any and all charges, complaints, claims,
7 liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action,
8 suits, rights, demands, costs, losses, debts and expenses (including attorney's fees and costs
9 actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, filed
10 or unfiled, in connection Employee's employment with Employer, and/or including but not
11 limited to, employment claims, rights arising out of alleged violations of any contracts, express
12 or implied, any covenant of good faith and fair dealing, express or implied, or any tort including
13 defamation, or any legal restrictions on Employer's right to hire, refusal to hire or terminate its
14 employees, or any federal, state or other governmental statute, regulation or ordinance. (The
15 release set forth in this Paragraph B shall be referred to hereinafter as the "General Release.")

16 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
17 Date of Final Approval, Named Plaintiff shall be deemed to have expressly waived and
18 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
19 1542 of the California Civil Code, or any other similar provision under federal or state law,
20 which provides:

21
22 **A GENERAL RELEASE DOES NOT EXTEND TO**
23 **CLAIMS, THAT THE CREDITOR OR RELEASING**
24 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
25 **HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
26 **RELEASE AND THAT, IF KNOWN BY HIM OR HER,**
27 **WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
28 **SETTLEMENT WITH THE DEBTOR OR RELEASED**
PARTY.

27 ///

28 ///

1 Accordingly, if the facts relating in any manner to this Agreement are found hereafter to
2 be other than or different from the facts now believed to be true, the release of claims contained
3 herein shall be effective as to all unknown claims.

4 Notwithstanding the foregoing provisions, the General Release by Named Plaintiff does
5 not constitute a waiver of any claims that cannot by law be waived, including claims for workers'
6 compensation, disability insurance, or unemployment insurance.

7 **D. Publicity.**

8 The Named Plaintiff and his counsel agree that they have not and will not publish this
9 Agreement or its terms. Named Plaintiff's counsel shall not issue any press releases or press
10 statements regarding this Agreement, identify Defendant or its counsel by name in any media
11 including Class Counsel's website, or have any communications with the press or media about
12 the Litigation or the Agreement. However, nothing in the provision shall be construed from as
13 preventing the Parties from taking following actions: (a) Named Plaintiff's counsel shall be
14 allowed to refer to the Litigation and Agreement in other litigation to support their adequacy as
15 attorneys for a putative class or to justify an award of attorney's fees; (b) the Parties shall have
16 the right to disclose the Agreement as may be required under federal or state tax and/or securities
17 laws or under Generally Accepted Accounting Principles; (c) if a class members contacted
18 Named Plaintiff's counsel, counsel is free to discuss the terms of the Agreement with Class
19 Members; (d) the Parties may refer to the Agreement, describe its terms, and file the Agreement
20 with the Court, the LWDA, and the Settlement Administrator in connection with any
21 proceedings which are reasonably necessary to obtain approval of the Agreement; and (e) the
22 Parties or their representatives may communicate with accountants or legal advisors regarding
23 the Agreement. Except for the previously listed exceptions, in response to any inquiries about
24 the Litigation, the Parties may state that "the matter has been resolved."

25 **VIII. SETTLEMENT ADMINISTRATOR**

26 Named Plaintiff and Defendant, through their respective counsel, have selected CPT
27 Group, Inc. as the Settlement Administrator to administer the Agreement, which includes but is
28 not limited to distributing and responding to inquiries about the Notice of Proposed Class Action

1 Settlement and Workweek Dispute Form, determining the validity of any disputes and opt-outs,
2 and calculating all Net Settlement Payments to be paid from the Net Settlement Fund. Charges
3 and expenses of the Settlement Administrator, estimated not to exceed Seven Thousand Seven
4 Hundred Dollars and Zero Cents (\$7,700.00), will be paid from the Settlement Amount. If the
5 actual Settlement Administrator fees are less than the Parties' estimation, the difference between
6 the actual and estimated Settlement Administrator fees will be included in the Net Settlement
7 Amount.

8 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

9 **A. Notice.**

10 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared
11 a Notice of Proposed Class Action Settlement (the "Notice"), in the form attached hereto as
12 Exhibit "A", and a Workweek Dispute Form, in the form attached hereto as Exhibit "B", which
13 in substance will be provided to Settlement Class Members as follows:

14 As soon as practicable following Preliminary Approval of the Agreement, but no later
15 than seven (7) calendar days after the Court's Preliminary Approval Order, Defendant will
16 provide to the Settlement Administrator the following information about each Settlement Class
17 Member: (1) name; (2) last known home address; (3) last known telephone number; (4) number
18 of Workweeks as a Settlement Class Member during the Class Period; (5) social security number
19 ("Class List"); and (6) any other information required by the Settlement Administrator in order
20 to effectuate the terms of this Agreement. Defendant further agrees to consult with the
21 Settlement Administrator prior to the production date to ensure that the format will be acceptable
22 to the Settlement Administrator.

23 The Settlement Administrator shall run all the addresses provided through the United
24 States Postal Service NCOA database (which provides updated addresses for any individual who
25 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
26 address) to obtain current address information, and shall mail the Notice and Workweek Dispute
27 Form to all Settlement Class Members via first-class regular U.S. Mail using the most current
28 mailing address information available within fourteen (14) calendar days of the receipt of the

1 Class List from Defendant. The Notice shall be provided to Settlement Class Members in both
2 English and Spanish. The Notice shall provide Settlement Class Members forty five (45) days'
3 notice of all applicable dates and deadlines. If a Settlement Class Member is known to be
4 deceased, the Notice and Workweek Dispute Form for that deceased Settlement Class Member
5 shall be mailed to the last known address (or updated address, if applicable) of the deceased
6 Settlement Class Member's heir or the legal representative of the deceased Settlement Class
7 Member's estate, to the extent known.

8 The Notice will also include information regarding the nature of the Litigation; a
9 summary of the terms of this Agreement; the definition of the Settlement Class; a statement that
10 the Court has preliminarily approved this Agreement; the procedure and time period for
11 objecting to the Agreement, the date and location of the Final Approval hearing; information
12 regarding the opt-out procedure; and Defendant's calculation of the number of Eligible
13 Workweeks that each Settlement Class Member and PAGA Group Member has worked as an
14 employee in California at any time during Class Period and PAGA Period. The Notice shall
15 enclose the Workweek Dispute Form for Settlement Class Members.

16 For each Settlement Class Member, the Workweek Dispute Form will identify the
17 number of Eligible Workweeks that she/he was employed and their estimated Net Settlement
18 Payment. The Workweek Dispute Form will also inform the employee of their right to dispute
19 this number by completing and returning the form within forty five (45) days of the postmark
20 date of the Workweek Dispute Form. Class Member's receipt of settlement proceeds is not
21 conditional on the submission of the Workweek Dispute Form. Absent the receipt of a
22 Workweek Dispute Form the number of workweeks identified in the Workweek Dispute Form
23 shall be determined to be accurate. The resolution of any disputes concerning the number of
24 Eligible Workweeks is discussed in section X.

25 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
26 submit the applicable and available information, including name, Social Security number, and
27 original mailing address, to a company that specializes in address skip tracing in an attempt to
28 locate a more current address within three (3) business days. If the Settlement Administrator is

1 successful in locating a new address, it will promptly re-mail the Notice to the Settlement Class
2 Member. Further, any Notices returned as non-deliverable with a forwarding address to the
3 Settlement Administrator before the Objection/Opt Out Deadline, shall be sent to the forwarding
4 address affixed thereto within three (3) business days.

5 Should any Settlement Class Member timely submit a Workweek Dispute Form with a
6 deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the
7 Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency
8 notice. The deficiency notice will provide the Settlement Class Member no more than fourteen
9 (14) calendar days from the mailing of the deficiency notice to postmark a written response to
10 cure all deficiencies. The failure of a Settlement Class Member to timely submit a Workweek
11 Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties'
12 counsel agrees to allow the dispute.

13 No later than fifteen (15) days prior to the Final Approval Hearing, the Settlement
14 Administrator shall provide counsel for Defendant and Class Counsel with a declaration
15 attesting to the completion of the Notice process, including the number of attempts to obtain
16 valid mailing addresses for and re-sending of any returned Notices, as well as the number of
17 valid Workweek Dispute Forms, opt-outs and deficiencies which the Settlement Administrator
18 received.

19 **B. Objections.**

20 In order to object to this Agreement, or any term of it, the objecting Settlement Class
21 Member must mail a written statement of the grounds of objection, signed and dated by the
22 objecting Settlement Class Member or his or her attorney, along with all supporting papers to
23 the Settlement Administrator. In order to be valid and timely, any written objection must be
24 made by the Objection/Opt Out Deadline. The written objection must state the Settlement Class
25 Member's full name and the dates they worked for Defendant. The written objection should
26 also clearly explain why the Settlement Class Member objects to the Agreement and state
27 whether the Settlement Class Member (or someone on his or her behalf) intends to appear at the
28 Final Approval Hearing. The Settlement Class Member may appear through a timely submitted

1 written objection, personally, or through an attorney, at his or her own expense, at the Final
2 Approval hearing to present his or her objection directly to the Court. Any attorney who will
3 represent an individual objecting to this Agreement must file a notice of appearance with the
4 Court and serve Class Counsel and Defense Counsel no later than the Objection/Opt Out
5 Deadline.

6 Any Settlement Class Member making the objection may not submit a request for
7 exclusion (i.e., must not opt out). If a Settlement Class Member objects to this Agreement, the
8 Settlement Class Member will remain a member of the Settlement Class and if the Court
9 approves this Agreement, the Settlement Class Member will receive a Net Settlement Payment
10 from the Settlement Amount and will be bound by the terms of the Agreement and Final
11 Approval in the same way and to the same extent as a Settlement Class Member who does not
12 object. The date of mailing of the Notice of Proposed Class Action Settlement to the objecting
13 Settlement Class Member shall be conclusively determined according to the records of the
14 Settlement Administrator. The Court retains final authority with respect to the consideration and
15 admissibility of any Settlement Class Member objections. Provided that the Settlement
16 Administrator mailed the Notice to a Settlement Class Member as set forth in Paragraph IX(A),
17 this deadline to file an objection shall apply notwithstanding an assertion by any Settlement
18 Class Member of non-receipt of the Notice.

19 Named Plaintiff and Defendant will be permitted to respond in writing to such objections
20 no later than seven (7) days before the Final Approval hearing. Named Plaintiff waives any right
21 to object to the Agreement, and hereby endorses the Agreement as fair, reasonable and adequate
22 and in the best interests of the Settlement Class.

23 **C. Opportunity to be Excluded.**

24 In order for any Settlement Class Member to validly exclude himself or herself from the
25 Settlement Class and this Agreement (i.e., to validly opt out), a written request for exclusion
26 ("Request to be Excluded") must be signed by the Settlement Class Member or his or her
27 authorized representative and must be sent to the Settlement Administrator, postmarked by no
28 later than the Objection/Opt Out Deadline. The Request to be Excluded must include the

1 Settlement Class Member's full name, current address, current telephone number, dates of
2 employment and the following statement or a similar statement: "I wish to exclude myself from the
3 settlement reached in the matter of *McCray v. Los Alamitos Race Course*. I understand that by
4 excluding myself, I will not receive any money from the settlement reached in this matter." The
5 Request to be Excluded must be signed and dated by the Settlement Class Member. The Notice of
6 Proposed Class Action Settlement shall contain instructions on how to opt out.

7 The date of the initial mailing of the Notice of Proposed Class Action Settlement, and
8 the date the signed Request to be Excluded was postmarked, shall be conclusively determined
9 according to the records of the Settlement Administrator. Any Settlement Class Member who
10 timely and validly submits a Request to be Excluded from the Settlement Class and this
11 Agreement will not be entitled to any individual Net Settlement Payment, will not be bound by
12 the terms and conditions of this Agreement, and will not have any right to object, appeal, or
13 comment thereon.

14 Any Settlement Class Member who does not timely file and mail a Request to be
15 Excluded from the Settlement Class will be deemed included in the Settlement Class and bound
16 by the terms of this Agreement upon final approval by the Court. Named Plaintiff waives any
17 right to be excluded from the Settlement Class.

18 If the Court approves the compromise of the PAGA claim, all PAGA Group Members
19 within the PAGA Period are bound by the Court's resolution of that claim. Class Members
20 who are also PAGA Group Members submitting a request for exclusion will nevertheless
21 receive their pro-rata share of the 25% of the PAGA Settlement Amount allocated for PAGA
22 penalties to PAGA Group Members.

23 **D. Cooperation.**

24 The Parties and their respective counsel agree not to encourage members of the
25 Settlement Class to refrain from participating in this Agreement, to opt out of this Agreement,
26 or to object to this Agreement, directly or indirectly, through any means. However, if a
27 Settlement Class Member contacts Class Counsel, Class Counsel may discuss the terms of this
28 Agreement and the Settlement Class Member's options.

1 **X. DISPUTES OF ELIGIBLE WORKWEEKS**

2 Named Plaintiff and Defendant have agreed upon the following procedure to resolve all
3 disputes of the Settlement Class during the Settlement Period.

4 **A. Workweek Information.**

5 All Settlement Class Members shall receive a Workweek Dispute Form which shall state
6 their respective total number of Eligible Workweeks and their estimated Net Settlement
7 Payment.

8 If a Settlement Class Member does not dispute the number of Eligible Workweeks set
9 forth in the Workweek Dispute Form, such person need not take further action to participate in
10 the Settlement. If a Settlement Class Member disputes the number of Eligible Workweeks set
11 forth in the Workweek Dispute Form, such person must follow the directions in the Workweek
12 Dispute Form and in the Notice, including preparing a statement setting forth the number of
13 Eligible Workweeks that such person believes in good faith is correct and stating that the
14 Settlement Class Member authorizes the Settlement Administrator to review the Settlement
15 Class Member's personnel file and payroll records to determine such information and attaching
16 any relevant documentation in support thereof. The Settlement Class Member must mail the
17 signed and completed Workweek Dispute Form to the Settlement Administrator postmarked by
18 no later than the Objection/Opt Out Deadline, or the number of Eligible Workweeks set forth in
19 the Dispute Form will govern the Net Settlement Payments to the Participating Class Members.

20 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation
21 with Class Counsel and counsel for Defendant, will review the pertinent payroll records showing
22 the dates the Settlement Class Member was employed and the pertinent leave(s) taken, which
23 records Defendant agrees to make available to the Settlement Administrator and Class Counsel.

24 After consulting with Class Counsel and counsel for Defendant, the Settlement
25 Administrator shall compute the number of Eligible Workweeks to be used in computing the
26 Settlement Class Member's pro rata share of the Net Settlement Amount. In the event there is a
27 disparity between the dates a Settlement Class Member claims he or she worked during the Class
28 Period and the dates indicated by Defendant's records, Defendant's records will control unless

1 inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement
2 Class Member, in which case the paycheck stub(s) will control. The Settlement Administrator's
3 decision as to the total number of Eligible Workweeks shall be final and non-appealable. The
4 Settlement Administrator shall send written notice of the decision on any such claim to the
5 Settlement Class Member, to Class Counsel, and counsel for Defendant within ten (10) calendar
6 days of receipt of the dispute.

7 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

8 **A. Distribution Formula.**

9 Participating Class Members and PAGA Group Members will receive a lump sum
10 payment as good and valuable consideration for the waiver and release of claims set forth in
11 Sections VII(A)(B), above, in an amount determined by the Settlement Administrator in
12 accordance with the provisions of this Agreement (the Net Settlement Payment). The Net
13 Settlement Payment for any Participating Class Member who is also a PAGA Group Member
14 shall include the Participating Class Member's share of the PAGA Settlement Amount allocated
15 for PAGA penalties to PAGA Group Members.

16 The Net Settlement Payment to each Participating Class Member will first be determined
17 by dividing the Net Settlement Amount by the total number of Eligible Workweeks worked by
18 all Participating Class Members during the Settlement Period (the "Weekly Amount") and then
19 multiplying the Weekly Amount by the number of Eligible Workweeks worked by the
20 individual Participating Class Member as determined by the Settlement Administrator in
21 accordance with Section X, above, less any applicable withholding taxes based on the Parties
22 stipulated allocation of the Net Settlement Amount as provided for in Section XV, below.

23 In addition, each Class Member who is a PAGA Group Member during the PAGA
24 Period will be paid a pro-rata share of the \$5,000 allocated for PAGA penalties to PAGA Group
25 Members, as calculated by the Settlement Administrator by dividing the PAGA Settlement
26 Amount to PAGA Group Members (i.e., \$5,000) by the total number of Eligible Workweeks
27 worked by all PAGA Group Members during the PAGA Period (the "Weekly PAGA Amount")
28 and then multiplying the Weekly PAGA Amount by the number of Eligible Workweeks worked

1 by the individual PAGA Group Member, as determined by the Settlement Administrator in
2 accordance with Section X, above.

3 Class Members who are PAGA Group Members will not be permitted to exclude
4 themselves from the PAGA claim portion of the Settlement. PAGA penalty settlement
5 payments in the appropriate amounts will be distributed by the Settlement Administrator by
6 mail to the PAGA Group Members including to those Class Members who are PAGA Group
7 Members who submitted a request for exclusion.

8 **B. Funding of the Settlement Amount.**

9 The funding of the Settlement Amount will be completed at one time with funds
10 provided to and escrowed by the Settlement Administrator. The funds used for the Settlement
11 Amount shall be paid to the Settlement Administrator by Defendant within fifteen (15) days of
12 the Court's Final Approval Order. No distributions from these escrowed funds will be made
13 until seven (7) days after the Effective Date. The lump-sum distribution shall occur seven (7)
14 days after the Effective Date.

15 If a Participating Class Member is deceased at the time of distribution, the Settlement
16 Administrator shall distribute the deceased Participating Class Member's Net Settlement
17 Payment to the deceased Participating Class Member's legal heir(s). In the event of a dispute as
18 to the legal heir(s), the Settlement Administrator shall notify the executor of the deceased
19 Participating Class Member's estate and attempt to place the deceased Participating Class
20 Member's Net Settlement Payment in escrow or similar disposition such that any competing heirs
21 may take whatever action they wish to resolve ultimate disposition of such money and the
22 Settlement Administrator and the Parties hereto may disclaim any further interest in or obligation
23 in relation to such money.

24 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
25 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
26 trace search and, if another address is identified, shall mail the check to the newly identified
27 address. If the Settlement Administrator is unable to obtain a valid mailing address through this

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1 process, the monies represented by the check shall be turned over according to the below
2 procedures.

3 Net Settlement Payment checks will specifically indicate that they are void if not
4 negotiated within one hundred eighty 180 days of their issuance. Any Net Settlement Payment
5 checks that remain uncashed one hundred eighty (180) or more calendar days after issuance by
6 the Settlement Administrator shall be voided. The Settlement Administrator will remit the entire
7 amount of each Participating Class Member's uncashed Net Settlement Payment to the
8 Controller of the State of California pursuant to the Unclaimed Property Law, California Civil
9 Code § 1500, *et seq.*, to be held in trust for those Participating Class Members who did not
10 timely cash their Net Settlement Payment checks, until such time as they claim their property.
11 The Parties agree that this disposition results in no "unpaid residue" under California Civil
12 Procedure Code § 384, as the entire Net Settlement Payment will be paid out to Participating
13 Class Members, whether or not they all cash their settlement checks. Therefore, Defendant will
14 not be required to pay any interest on such amounts.

15 **C. Time for Distribution of the Attorney Fees, Costs, and PAGA Settlement and**
16 **Enhancement to Named Plaintiff.**

17 The Settlement Administrator shall cause the Court-approved enhancement to Named
18 Plaintiff, Court-approved attorney's fees and Litigation costs, and PAGA Settlement to be paid
19 in pro rata amounts at the same time and manner as the Net Settlement Payments to the
20 Participating Class Members and PAGA Group Members.

21 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

22 The amounts paid under this Agreement do not represent a modification of any
23 previously credited hours of service under any employee benefit plan, policy or bonus program
24 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
25 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
26 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of
27 this Agreement shall not be applied retroactively, currently or on a going forward basis as salary,
28 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit

1 plan, policy or bonus program. Defendant retains the right to modify the language of its benefit
2 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid
3 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," "days
4 worked," "shifts worked" or any similar measuring term as defined by applicable collective
5 bargaining agreements, plans, policies and bonus programs for purpose of eligibility, vesting,
6 benefit accrual or any other purpose, and that additional contributions or benefits are not
7 required by this Agreement.

8 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

9 Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall
10 not seek or receive an amount in excess of Two Hundred Fifty Thousand Dollars and Zero Cents
11 (\$250,000.00) which represents one-third of the Settlement Amount for all past and future
12 attorneys' fees necessary to prosecute, settle and administer the Litigation and this Agreement.
13 Additionally, Defendant shall not oppose an application by Class Counsel for, and Class
14 Counsel shall not seek or receive an amount in excess of, Twenty Five Thousand Dollars and
15 Zero Cents (\$25,000.00), which represents all past and future Litigation costs and expenses
16 necessary to prosecute, settle and administer the Litigation and this Agreement. Any attorneys'
17 fees or Litigation costs awarded to Class Counsel by the Court shall be deducted from the
18 Settlement Amount for the purpose of determining the Net Settlement Amount. The "future"
19 aspect of these amounts include, without limitation, all time and expenses expended by Class
20 Counsel in defending the Agreement and securing Final Approval (including any appeals
21 therein). There will be no additional charge of any kind to either Settlement Class Members or
22 request for additional consideration from Defendant for such work. This amount shall include
23 all attorneys' fees, Litigation costs and expenses for which Named Plaintiff and Class Counsel
24 could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or
25 amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then
26 the unapproved portion or portions shall revert to the Net Settlement Amount.

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1 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

2 Defendant shall not oppose an application by Named Plaintiff and Named Plaintiff shall
3 not seek or receive an amount in excess of Seven Thousand Five Hundred Dollars (\$7,500.00),
4 for his participation in and assistance with the Litigation. Any enhancement awarded to Named
5 Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of
6 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court
7 approves an enhancement of less than Seven Thousand Five Hundred Dollars (\$7,500.00) to
8 Named Plaintiff then the unapproved portion or portions shall revert into the Net Settlement
9 Amount.

10 **XV. TAXATION AND ALLOCATION**

11 The Parties agree that all employee-side employment taxes and other legally required
12 withholdings will be withheld from the Net Settlement Payments to Participating Class
13 Members and Named Plaintiff based on the Parties' stipulated allocation of the Net Settlement
14 Amount as provided for in this Section. All Employer Taxes shall be paid by Defendant
15 separately and in addition to the Settlement Amount.

16 The amount of federal income tax withholding will be based upon a flat withholding rate
17 for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as
18 amended or supplemented. Income tax withholding will also be made pursuant to applicable
19 state and/or local withholding codes or regulations.

20 For withholding tax characterization purposes and payment of taxes, the Net Settlement
21 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement
22 Allocation"):

- 23 (1) 20% as wages; and
24 (2) 80% as penalties and interest.

25 Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required
26 by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the
27 Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the

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1 date of this Agreement, the processes set forth in this section may be modified in a manner to
2 bring Defendant into compliance with any such changes.

3 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

4 In order to implement the terms of this Agreement and to settle claims alleged under the
5 PAGA, the Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) as
6 the penalties portion of the Settlement Amount as the PAGA Settlement Amount. Pursuant to
7 PAGA, Seventy Five Percent (75%) or Fifteen Thousand Dollars and Zero Cents (\$15,000.00)
8 of the PAGA Settlement Amount will be paid to the LWDA, and Twenty-Five Percent (25%)
9 or Five Thousand Dollars and Zero Cents (\$5,000.00) of the PAGA Settlement Amount will be
10 included in the Net Settlement Amount to be distributed to PAGA Group Members. The
11 Settlement Administrator shall disburse the PAGA Settlement to the California LWDA within
12 fifteen (15) calendar days of the Effective Date.

13 **XVII. COURT APPROVAL**

14 The terms of this Agreement is contingent upon Final Approval by the Court and the
15 entry of Final Judgment. Named Plaintiff and Defendant agree to take all steps as may be
16 reasonably necessary to secure both Preliminary Approval and Final Approval of the
17 Agreement, to the extent not inconsistent with the terms of this Agreement, and will not take
18 any action adverse to each other in obtaining Judge approval, and, if necessary, appellate
19 approval, of this Agreement in all respects. Named Plaintiff and Defendant expressly agree that
20 they will not file any objection to the terms of this Agreement or assist or encourage any person
21 or entity to file any such objection.

22 **XVIII. APPRISAL AND CERTIFICATION BY THE SETTLEMENT**
23 **ADMINISTRATOR.**

24 The Settlement Administrator shall keep Class Counsel and Defendant's Counsel
25 apprised of all distributions from the Settlement Amount. Upon completion of administration of
26 this Agreement, the Settlement Administrator shall provide written certification of such
27 completion to the Court and to Class Counsel and Defendant's Counsel. The Settlement

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1 Administrator shall also provide Defendant with a final accounting, including the names of
2 payees and Net Settlement Payments.

3 **IX. MISCELLANEOUS PROVISIONS**

4 **A. Stay of Litigation.**

5 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation,
6 pending Final Approval of this Agreement by the Court.

7 **B. Interpretation of the Agreement.**

8 This Agreement constitutes the entire agreement between Named Plaintiff and
9 Defendant. Except as expressly provided herein, this Agreement has not been executed in
10 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
11 written representations or terms shall modify, vary or contradict its terms. In entering into this
12 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
13 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
14 enforced under the laws of the State of California, both in its procedural and substantive aspects,
15 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
16 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
17 Court of the State of California for the County of Orange, and Named Plaintiff and Defendant
18 hereby consent to the personal jurisdiction of the Judge over them solely in connection
19 therewith. The foregoing is only limited to disputes concerning this Agreement. Named
20 Plaintiff, on his own behalf and on behalf of the Settlement Class, and Defendant participated
21 in the negotiation and drafting of this Agreement and had available to them the advice and
22 assistance of independent counsel. As such, neither Named Plaintiff nor Defendant may claim
23 that any ambiguity in this Agreement should be construed against the other.

24 The terms and conditions of this Agreement constitute the exclusive and final
25 understanding and expression of all agreements between Named Plaintiff and Defendant with
26 respect to resolution of this Litigation. The Agreement may be modified only by a writing signed
27 by counsel for all Parties or their successors-in-interest.

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1 **C. Further Cooperation.**

2 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
3 prepare and execute all documents, to seek the necessary approvals from the Court, and to do
4 all things reasonably necessary or convenient to consummate this Agreement as expeditiously
5 as possible.

6 **D. Counterparts.**

7 This Agreement may be executed in one or more actual or non-original counterparts, all
8 of which will be considered one and the same instrument and all of which will be considered
9 duplicate originals.

10 **E. Authority.**

11 Each individual signing below warrants that he or she has the authority to execute this
12 Agreement on behalf of the party for whom or which that individual signs.

13 **F. No Third Party Beneficiaries.**

14 Named Plaintiff, members of the Settlement Class, and Defendant are direct
15 beneficiaries of this Agreement, but there are no third party beneficiaries except as identified
16 herein.

17 **G. Force Majeure.**

18 The failure of any party to perform any of its obligations hereunder shall not subject such
19 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
20 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
21 floods, wars, interruptions or delays in transportation, power outages, labor disputes or
22 shortages, shortages of material or supplies, governmental laws, restrictions, rules or
23 regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar
24 or different circumstances or causes beyond the reasonable control of such party.

25 **H. Deadlines Falling on Weekends or Holidays.**

26 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
27 or legal holiday, that deadline shall be continued until the following business day.

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I. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

J. Escalator Clause.

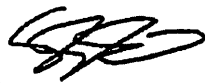
Defendant estimates the class consists of approximately 37,446 Eligible Workweeks as of May 14, 2021, and this estimate serves as the basis for Named Plaintiff accepting the settlement. Should the total number of Eligible Workweeks increase by more than 10%, Defendant shall increase the Net Settlement Amount proportionately over the 10% threshold. For example, if the total workweeks are 41,192 and the workweek value calculated based on 41,192 is \$20.00 per workweek, then Defendant would have to increase the Net Settlement Amount by \$40 [*i.e.*, $(41,192 - (37,446 * 1.10) = 2 \times \$20)$] to account for the increase.

K. Defendant's Fees and Costs

All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall be borne by Defendant.

APPROVED AS TO CONTENT

Dated: 03/09/, 2022

By: 
ELBERT MCCRAY

Dated: _____, 2022

By: _____
Its: _____
For: LOS ALAMITOS RACE COURSE

1 **I. Severability.**

2 In the event that any one or more of the provisions contained in this Agreement shall for
3 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
4 unenforceability shall in no way effect any other provision if Defense Counsel and Class
5 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
6 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

7 **J. Escalator Clause.**

8 Defendant estimates the class consists of approximately 37,446 Eligible Workweeks as
9 of May 14, 2021, and this estimate serves as the basis for Named Plaintiff accepting the
10 settlement. Should the total number of Eligible Workweeks increase by more than 10%,
11 Defendant shall increase the Net Settlement Amount proportionately over the 10% threshold.
12 For example, if the total workweeks are 41,192 and the workweek value calculated based on
13 41,192 is \$20.00 per workweek, then Defendant would have to increase the Net Settlement
14 Amount by \$40 [i.e., $(41,192 - (37,446 * 1.10) = 2 * \$20)$] to account for the
15 increase.

16 **K. Defendant's Fees and Costs**

17 All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall
18 be borne by Defendant.

19
20 APPROVED AS TO CONTENT

21
22 Dated: _____, 2022

By: _____
ELBERT MCCRAY

23
24
25 Dated: 4.22.22, 2022

By: [Signature]
Its: CEO
For: LOS ALAMITOS RACE COURSE

1 APPROVED AS TO FORM

2 Dated: 3/9, 2022

THE NOURMAND LAW FIRM, APC

3
4 By:



5 Michael Nourmand
6 James A. De Sario
7 Attorneys for Plaintiff
8 ELBERT MCCRAY

9
10 Dated: April 27, 2022

FISHER & PHILLIPS, LLP

11 By:



12 Christine Baran
13 Boris Sorsher
14 Bret Martin
15 Attorneys for Defendant
16 LOS ALAMITOS RACE COURSE
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EXHIBIT “A”

NOTICE OF CLASS ACTION AND PROPOSED RESOLUTION

McCray v. Los Alamitos Race Course
Orange County Superior Court Case No. 30-2020-01131139

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

If you are a current or former non-exempt hourly employee of Los Alamitos Race Course who worked in California any time between February 10, 2016 to September 16, 2021, you are eligible to receive compensation from a proposed class action settlement.

- The Settlement resolves a class action lawsuit brought by Elbert McCray on behalf of himself and other similarly situated employees against Los Alamitos Race Course (“Defendant”) regarding employee payment of wages, including minimum wages, overtime, and double time wages, meal periods, and derivative penalties, including under the Private Attorneys General Act of 2004 (the “PAGA”).
- The Court has not ruled on who should win. Defendant denies all liability. This Settlement is a compromise and is not an admission of any wrongdoing.
- The Settlement will provide monetary payment to eligible Class Members who do not exclude themselves.
- Your legal rights are affected whether you act or do not act. **PLEASE READ THIS NOTICE CAREFULLY.**

YOUR RIGHTS AND CHOICES:

<i>You May:</i>		<i>Due Date</i>
Do Nothing	A Settlement check will automatically be sent to you.	None.
Object	Write to the Court about why you do not like the Settlement. You will still receive a settlement check even if you object to the Settlement.	<u>Postmarked</u> by [45 days after mailing of notice]
Exclude Yourself	Ask to get out of the Settlement. To do so, you need to send a written statement to the Settlement Administrator stating that you wish to exclude yourself from the Settlement. If you exclude yourself, you get no payment. However, you retain whatever legal rights you may have against Defendant in relation to the claims in this lawsuit. Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.	<u>Postmarked</u> by [45 days after mailing of notice]

- The Court still has to decide whether to approve the Settlement. Payments will be made only after the Court grants final approval of the Settlement. **The Final Approval Hearing is currently scheduled to be made on _____, 2022, at _____ a.m./p.m. in Department CX105 of the Orange County Superior Court located at 751 West Santa Ana Blvd. Santa Ana, California 92701.** The Court may continue the date of the Final Approval Hearing without giving further notice to the Class as a whole.
- **Any questions? Read on.** Your rights and choices are further explained in this Notice.

1. Why did I get this notice?

You received this notice because records show you are a current or former non-exempt hourly employee of Defendant who worked on or between February 10, 2016 to September 16, 2021, and may be affected by the claims that are

disputed in this Lawsuit. The Court ordered that this notice be sent to you because you have a right to know about a proposed class action Settlement that can affect you. You have legal rights and choices to make before the Court decides whether or not to approve the Settlement. This notice explains what the Lawsuit is about, how the Settlement will benefit you, and how to get your benefits or to “opt out” of the Settlement.

2. What is this lawsuit about?

On February 10, 2020, Elbert McCray (“Mr. McCray”) filed a lawsuit on behalf of himself and others. The lawsuit claims that Defendant violated state labor laws and unfair competition laws through the following: failure to pay minimum, overtime, and double time wages; failure to provide meal periods; failure to pay all wages due upon termination; failure to provide accurate wage statements; and unlawful business practices. The lawsuit also seeks civil penalties on behalf of the State of California pursuant to the Private Attorneys General Act of 2004 (“PAGA”). Defendant denies all of these allegations and asserts that it fully complied with all of its legal obligations.

The person who sued – Mr. McCray – is called the Class Representative. The entity Mr. McCray sued – Los Alamitos Race Course – is called the Defendant.

3. Why is this lawsuit a class action?

In a class action, one or more people called Class Representatives (in this case, Mr. McCray), sue on behalf of people who appear to have similar claims (in this case all individuals who have been employed by Defendant in the state of California as non-exempt hourly employees at any time from February 10, 2016 to September 16, 2021). All these people are referred to here as Class Members. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Orange County Superior Court is in charge of this class action.

4. Why is there a Settlement?

The Court has not decided who is right or wrong in this lawsuit. Instead, the Class Representative and Defendant have agreed to the Settlement. That way, all parties avoid the costs and risks of a trial, and all the people who qualify as Class Members will receive a payment unless they choose to be excluded from the Settlement.

On [], the Court granted preliminary approval of the Settlement, appointed Plaintiff Elbert McCray as the Class Representative, and appointed his attorneys, THE NOURMAND LAW FIRM, APC, as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

5. How do I know if I am part of the Settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendant in the State of California as a non-exempt hourly employee at any time between February 10, 2016 to September 16, 2021.

6. What does the Settlement Provide?

The Settlement provides that Defendant will pay a maximum of \$750,000.00 (“Gross Settlement Fund”), which will cover settlement payments to all Class Members, Class Counsel’s attorney fees and costs, settlement administration fees, the Class Representative enhancement payment, and payment of PAGA penalties to the California Labor Workforce Development Agency (“LWDA”).

The “Net Settlement Amount” is the portion of the Gross Settlement Fund that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion. The Net Settlement is the Gross Fund less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed one third (1/3rd) of the Gross Settlement Fund, or Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00);

- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty Five Thousand Dollars and Zero Cents (\$25,000.00);
- C. **Enhancement Payment to the Class Representative** in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00);
- D. **Settlement Administration Costs** which are currently estimated to be Seven Thousand Seven Hundred Dollars and Zero Cents (\$7,700.00).
- E. **Payment to the California Labor Workforce Development Agency (“LWDA”)** in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00).

The portion of the Net Settlement Amount that you are eligible to claim (“Estimated Net Settlement Payment”) will be determined on a *pro rata* basis, based on the number of weeks you worked in California as a non-exempt hourly employee of Defendant from February 10, 2016 to September 16, 2021.

The Net Settlement Payment paid to each Class Member will be categorized as 20% for wages, 80% for interest and penalties. The wage portion of the Settlement payments will be subject to withholding for the employee and employer share of taxes, and will be reported on a W-2 Form. The penalties and interest portion of the Net Settlement Payment will not be subject to any withholdings and will be reported on an IRS Form 1099. The Parties do not make any representations regarding the tax consequences of this Settlement or participation in it, and you are advised to seek your own personal tax advice.

Based on Defendant’s Records, you worked [] workweeks during the class period. Your Estimated Net Settlement Payment is [\$]. The amount of the payment may change depending on whether any Class Members opt-out from the Settlement, approval of other payments by the Court, and required tax withholdings.

This Amount was determined based on Defendant’s records, and is presumed correct. If you dispute the accuracy of Defendant’s records as to the number of weeks worked during the Class Period, you must complete and return the enclosed Workweek Dispute Form, along with any documents supporting your position, to the Settlement Administrator at:

CPT Group, Inc.
McCray v. Los Alamitos Race Course
[Address]

If you do not provide any documents supporting your dispute, the number of workweeks reported in Defendant’s records will be presumed correct, and your challenge will be rejected by the Settlement Administrator.

Your completed Workweek Dispute Form must be post marked no later than [60 Days After Mailing of Notice]. You are responsible for ensuring that the Settlement Administrator receives any Workweek Dispute Form you submit.

In addition, all current and former hourly non-exempt employees of Defendant within California (“PAGA Group Member”) during the period of February 10, 2019 to September 16, 2021 (“PAGA Period”) will be paid a pro-rata share of the \$5,000.00 allocated for PAGA penalties (“Weekly PAGA Amount”). Based on Defendant’s Records, you worked [] workweeks during the class period. Your Estimated Weekly PAGA Amount is [\$]. Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement.

7. How can I get a payment?

You do not have to take any action to qualify for a payment of your portion of the Net Settlement Amount.

8. When will I get paid?

The Court will hold a hearing (called the “Final Approval Hearing”) to decide whether to approve the Settlement. The Final Approval Hearing will be held in Department CX105 of the Orange County Superior Court located at 751 West Santa Ana Blvd. Santa Ana, California 92701, on____, 2022, at____a.m./p.m. After the Final Approval Hearing occurs, the Court resolves any issues related to the Settlement and approves the Settlement, and

the appeal period has passed, Settlement payments will be distributed to Class Members who have not requested to be excluded from the Settlement. You will probably be paid approximately three (3) to six (6) months after the Final Approval Hearing. Please be patient.

9. *Am I giving up anything for my payment?*

Unless you choose to get out of the Settlement (which is called “excluding yourself” or “opting out”), you remain part of the Class. By remaining part of the Class, all of the Court’s orders will apply to you and you give Defendant a “Release of Claims.” A Release of Claims means you cannot sue or be part of any other lawsuit against Defendant about the claims in the Lawsuit ever again.

Specifically, upon the complete funding of the Settlement Amount, Class Members who do not exclude themselves will release any and all claims and causes of action, known or unknown, contingent or accrued, against Defendant and its past or present parents, subsidiaries, investors, owners, affiliates, including but not limited to Los Alamitos Quarter Horse Racing Association, and their respective members, officers, directors, shareholders, managing agents, owners, employees, servants, consultants, agents, independent contractors, representatives, their insurers, reinsurers, and attorneys, and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, successors, and assigns, and any individual or entity which could be jointly liable with Defendant (“Released Parties”), arising out of the facts and claims asserted in the Lawsuit for wage and hour violations, or any other claims or causes of action that could have reasonably been asserted in the Lawsuit, based upon the facts alleged in the Lawsuit, whether under common law, statute, or regulation, including unpaid wages (minimum, overtime and double time wages), meal period claims and premiums, waiting time claims and associated penalties, wage statement claims and associated penalties, failure to pay all wages owed every pay period, unfair competition claims under Business & Professions Code section 17200, et al., damages for restitution, liquidated damages, equitable relief, general damages, interest, costs and attorneys’ fees related to these claims (“Released Claims”) at any time during the Class Period.

Furthermore, upon the date the Court enters an order granting final approval of the Settlement and Defendant funds the Gross Settlement Amount, all PAGA Group Members do and will be deemed to have fully, finally and forever released the Released Parties from any and all claims for civil Penalties under PAGA [Cal. Lab. Code §§ 2699, et seq.] based on the Labor Code violations alleged in or arising from the factual allegations in Plaintiff’s notice(s) sent to the LWDA and alleged in the Lawsuit (“Released PAGA Claims”).

Note that even if you choose to exclude yourself from the settlement, if the Court approves the Settlement, you will still release your claims under the PAGA only. You will also receive a settlement payment as to the release of the PAGA claim only.

The Released Claims covers claims that arose during the time period on and between February 10, 2016 to September 16, 2021.

The Released Claims do not include claims for workers’ compensation benefits, retaliation, discrimination, or any claims that may not be released by law.

10. *If I am a current employee, will this Settlement affect my employment?*

Neither the Settlement nor this lawsuit affects your ongoing employment with Defendant. Defendant will not retaliate or take any adverse action against you for participating in the Settlement.

11. *Can I get out of the settlement and the Class?*

You can get out of the Settlement and the Class. This is called excluding yourself or “opting out.” If you request to be excluded, you will not be paid from this Settlement, but you keep the right to file your own lawsuit against Defendant about claims alleged in this Lawsuit.

If you wish to exclude yourself from the Settlement, you must submit a written statement to the Settlement Administrator clearly stating, “I wish to exclude myself from the settlement reached in the matter of *McCray v. Los Alamitos Race Course*. I understand that by excluding myself, I will not receive any money from the settlement reached

in this matter.” This statement must also include: (1) your full name (and former names, if any), (2) your current address, (3) your current telephone number, (4) your approximate dates of employment with Defendant. Your written request for exclusion must be submitted to the Settlement Administrator at:

CPT Group, Inc.
McCray v. Los Alamitos Race Course
[Address]

All requests for exclusion must postmarked no later than [45 DAYS AFTER MAILING OF NOTICE]. You are responsible for ensuring that the Settlement Administrator receives any request for exclusion you submit.

12. Can I tell the Court I do not like the Settlement?

You can tell the Court if you do not like the Settlement or some part of it. If you wish to make an objection to the Settlement, you must submit a written objection to the Settlement Administrator stating: (1) your full name; (2) your current address, (3) your current phone number, (4) your approximate dates of employment with Defendant, (5) the basis for your objection; and, (6) whether you intend to appear at the Final Approval Hearing. Any objections must be submitted in writing to the Settlement Administrator at:

[Settlement Administrator Name]
McCray v. Los Alamitos Race Course
[Address]

All objections must be postmarked no later than [45 DAYS FROM MAILING OF NOTICE]. The Court will consider all objections from Class Members, regardless of whether they choose to appear at Final Approval Hearing. You are responsible for ensuring that the Settlement Administrator receives any objection you submit. If you submit an objection, you will still receive a Settlement check.

13. What is the difference between objecting and excluding myself?

Objecting is the way to tell the Court what you do not like about the Settlement. You can object only if you stay in the Class and the Settlement. Excluding yourself is the way to tell the Court you do not want to be part of the Class and the Settlement. If you exclude yourself, you cannot object because the Settlement does not affect your rights anymore.

14. What happens if I do nothing?

If you do not take any action, you will automatically be sent a Settlement Check after the Final Approval Hearing and you will be bound by the terms of the Settlement.

15. Do I have a lawyer in this case?

Yes. Plaintiff’s counsel, THE NOURMAND LAW FIRM, APC, has been preliminarily approved by the Court to be “Class Counsel” and represent Class Members’ interests in this litigation. The firm’s contact information is:

THE NOURMAND LAW FIRM, APC
Michael Nourmand, Esq.
James A. De Sario, Esq.
8822 West Olympic Blvd.
Beverly Hills, CA 90211
Telephone: (310) 553-3600
Facsimile: (310) 553-3603

Other than the attorney fees and costs approved by the Court, which will be paid out of the Settlement, you will *not* be charged for their service.

16. Should I get my own lawyer?

You do not need to get your own lawyer, because Class Counsel works for you. If you want your own lawyer to represent you, you will need hire your own lawyer at your own expense.

17. How will I learn if the Settlement was approved?

A notice of final judgment will be posted on the Settlement Administrator's website located at [INSERT]. This document will be available on the Settlement Administrators' website for 60 days.

18. What if I need additional information?

This Notice summarizes the settlement and the claims in the Lawsuit. For a more detailed statement of the matters involved in the Lawsuit and the Class Settlement, you may refer to the pleadings (i.e., the First Amended Class Action Complaint and the Answer), the Joint Stipulation and Agreement To Settle and Release Claims, and other papers filed in the Lawsuit, which may be inspected at the Office of the Court Clerk, Superior Court of the State of California, located at 751 West Santa Ana Blvd Santa Ana, CA 92701 between the Court's normal business hours of 8:00 a.m. to 4:00 p.m.

You can also get more information by calling the Settlement Administrator at [INSERT TOLL-FREE NUMBER], or by calling Class Counsel.

19. What if my contact information changes?

It is your responsibility to inform the Settlement Administrator any changes to your contact information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by using the Workweek Dispute and/or by contacting the Settlement Administrator at [INSERT TOLL FREE NUMBER].

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE
CLERK OF THE COURT OR THE JUDGE**

EXHIBIT “B”

WORKWEEK DISPUTE FORM

McCray v. Los Alamitos Race Course

Orange County Superior Court Case No. 30-2020-01131139

INSTRUCTIONS: You have been identified as a member of the Class described in the Notice of Proposed Class Action Settlement that was sent to you with this Workweek Form. This form can be used to update your contact information regarding, or to dispute your total workweeks according to Defendant Los Alamitos Race Course's ("Defendant") records.

If the information contained on this form is correct, you do NOT need to take any action at this time and will automatically be sent a Settlement payment after the Settlement is approved.

If the contact information contained in this form is incorrect, or if you believe the number of workweeks reported in Defendant's records is inaccurate, you must complete, sign, and return this form, along with documents supporting your dispute, to the Settlement Administrator at:

CPT Group, Inc.
McCray v. Los Alamitos Race Course
[Address]

ALL WORKWEEK DISPUTE FORMS MUST BE MUST POSTMARKED NO LATER THAN [45 DAYS AFTER MAILING OF NOTICE].

1. CURRENT CLAIMANT INFORMATION CORRECTED INFORMATION

<<CLASS MEMBER NAME>>	_____
<<STREET ADDRESS>>	_____
<<CITY, STATE, ZIP>>	_____
Last 4 Digits of Social Security No.: <<>>	_____

If any of the information above is incorrect, please provide the corrected information in the space provided in the right column, sign and date where indicated below, and return this form to the Settlement Administrator no later than [45 DAYS AFTER MAILING OF NOTICE].

2. REPORTED WORKWEEKS

According to Defendant's records, you were employed as a non-exempt employee of Defendant in California for a total of [INSERT NO. OF WORKWEEKS] workweeks during the time period between February 10, 2016 to September 16, 2021.

Based on the above number of workweeks, the Settlement Administrator has preliminarily calculated your total share due under this Settlement to be approximately \$_____. This figure could change depending on whether any Class Members opt-out from the Settlement, approval of other payments by the Court, and required tax withholdings.

If the information in Section 2 is accurate, you do NOT need to take any action at this time and will automatically be sent a Settlement.

If you believe that the information in this Section 2 is inaccurate, please check the box below, write in the number of workweeks you believe you worked for Defendant from February 10, 2016 to September 16, 2021,

sign and date this form where indicated below, and return this completed form to the Settlement Administrator, along with any documents that support your dispute, no later than [45 DAYS AFTER MAILING OF NOTICE]. If you do not provide any documents supporting your dispute, the number of workweeks reported in Defendant's records will be presumed correct and your challenge will be rejected by the Settlement Administrator.

☐

I wish to challenge the total number of workweeks during the period between February 10, 2016 to September 16, 2021. I believe that I worked____workweeks for Defendant during the period of February 10, 2016 to September 16, 2021. I have included any documentary evidence that supports my claim, and I recognize that my claim will not be reviewed without such statement or evidence being provided. I understand that by submitting this challenge, I authorize the Settlement Administrator to review and make a determination based on Defendant's records and the records/statement I submitted. I understand that this determination may increase or decrease the amount of my settlement share. I understand that such determinations are final and binding, with no opportunity for further appeal.

Date: _____

Signature of Claimant

Print Name

If you have any questions about completing this form, please call the Settlement Administrator at [INSERT TOLL FREE NUMBER]. You are responsible for ensuring that the Settlement Administrator receives this form.

EXHIBIT “C”

Christine D. Baran (SBN 158603)
E-Mail: cbaran@fisherphillips.com
Boris Sorsher (SBN 251718)
E-Mail: bsorsher@fisherphillips.com
Bret Martin (SBN 304658)
E-Mail: bmartin@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

Attorneys for Defendant
LOS ALAMITOS RACE COURSE

Michael Nourmand (SBN 198439)
E-Mail: mnourmand@nourmandlawfirm.com
James A. De Sario (SBN 262552)
E-Mail: jdesario@nourmandlawfirm.com
THE NOURMAND LAW FIRM, APC
8822 West Olympic Boulevard
Beverly Hills, California 90211

Attorneys for Plaintiff
ELBERT MCCRAY, on behalf of himself
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ELBERT MCCRAY, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

LOS ALAMITOS RACE COURSE, A
California corporation; and DOES 1
through 100, Inclusive,

Defendants.

CASE NO.: 30-2020-01131139-CU-OE-CXC
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Randall Sherman, Dept. CX105*

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Complaint Filed: February 10, 2020
FAC Filed: August 4, 2020
Trial Date: None Set

1 **[PROPOSED] ORDER**

2 The Motion of Plaintiff Elbert McCray ("Plaintiff") for Preliminary Approval of Class
3 Action Settlement ("Motion") came regularly for hearing before this Court on
4 _____. The Court, having considered the proposed Stipulation of Class Action
5 Settlement ("Settlement Agreement" or "Settlement"), attached as Exhibit 1 to the Declaration
6 of _____ filed concurrently with the Motion; having considered Plaintiff's
7 Motion, memorandum of points and authorities in support thereof, and supporting declaration
8 filed therewith; and good cause appearing, HEREBY ORDERS THE FOLLOWING:

9 1. The Court GRANTS preliminary approval of the class action settlement as set
10 forth in the Settlement Agreement and finds its terms to be within the range of reasonableness of
11 a settlement that ultimately could be granted approval by the Court at a Final Fairness hearing.
12 All terms used herein shall have the same meaning as defined in the Settlement Agreement. For
13 purposes of the Settlement only, the Court finds that the proposed Class is ascertainable and that
14 there is a sufficiently well-defined community of interest among the members of the Class in
15 questions of law and fact. Therefore, for settlement purposes only, the Court grants conditional
16 certification of the following settlement Class:

17 All non-exempt hourly employees of Defendant who performed work in the State
18 of California at any time during the Class Period, who have not already released
19 claims through a separate individual agreement or are not covered by any prior
20 court approved class action settlement.

21 2. For purposes of the Settlement only, the Court designates Plaintiff Elbert McCray
22 as Class Representative, and designates Michael Nourmand and James A. De Sario of The
23 Nourmand Law Firm, APC as Class Counsel.

24 3. The Court designates CPT Group, Inc. as the third-party Settlement
25 Administrator.

26 4. The Parties are ordered to implement the Settlement according to the terms of the
27 Settlement Agreement.

28 5. The Court approves, as to form and content, the Notice of Proposed Class
Settlement and the Workweek Dispute Form attached as Exhibits A and B, respectively, to the

1 Settlement Agreement.

2 6. The Court finds that the form of notice to the Class regarding the pendency of
3 the action and of the Settlement, the dates selected for mailing and distribution, and the methods
4 of giving notice to members of the Settlement Class, satisfy the requirements of due process,
5 constitute the best notice practicable under the circumstances, and constitute valid, due, and
6 sufficient notice to all members of the Settlement Class. The form and method of giving notice
7 complies fully with the requirements of California Code of Civil Procedure § 382, California
8 Civil Code § 1781, California Rules of Court §§ 3.766 and 3.769, the California and United
9 States Constitutions, and other applicable law.

10 7. The Court further approves the procedures for Settlement Class Members to opt-out of or
11 object to the Settlement, as set forth in the Notice Packet, and the Settlement Agreement. The
12 procedures and requirements for filing objections in connection with the final fairness hearing
13 are intended to ensure the efficient administration of justice and the orderly presentation of any
14 Settlement Class Member's objection to the Settlement, in accordance with the due process rights
15 of all Settlement Class Members.

16 8. The Court directs the Settlement Administrator to mail the Notice Packet to the
17 members of the Settlement Class in accordance with the terms of the Settlement.

18 9. The Notice Packet shall provide 45 calendar days' notice for Settlement Class
19 Members to submit disputes, opt-out of, or object to the Settlement.

20 10. The hearing on Plaintiff's Motion for Final Approval of Settlement on the
21 question of whether the Settlement should be finally approved as fair, reasonable, and adequate
22 is scheduled in Department CX105 of this Court, located at 751 West Santa Ana Blvd. Santa
23 Ana, California 92701, on _____, 2022 at ____ a.m. / p.m.

24 11. At the Final Fairness hearing, the Court will consider: (a) whether the Settlement
25 should be approved as fair, reasonable, and adequate for the Class; (b) whether a judgment
26 granting final approval of the Settlement should be entered; and (c) whether Plaintiff's
27 application for enhancement award, settlement administration costs, Class Counsel's attorney's
28 fees and costs, and PAGA payment to the LWDA should be granted.

12. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of Plaintiff's application for an enhancement award, settlement administration costs, Class Counsel's attorneys' fees and costs, and PAGA payment to the LWDA prior to the hearing on Plaintiff's Motion for Final Approval of Settlement according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

13. An implementation schedule is below:

Event	Date
Defendant to provide class contact information to Settlement Administrator no later than:	[7 calendar days after entry of the Preliminary Approval Order]
Settlement Administrator to mail the Notice and Workweek Dispute Form to the Settlement Class no later than:	[14 calendar days after Settlement Administrator's receipt of the Class List from Defendant]
Deadline for Class Members to submit disputes, request exclusion from, or object to the Settlement:	[45 days after mailing of the Notice]
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	_____, 2022
Hearing on Motion for Final Approval of Settlement	_____, 2022

If any of the dates in this implementation schedule falls on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

14. Pending the Final Fairness hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed. To facilitate administration of the Settlement pending final approval, the Court hereby enjoins Plaintiff and all members of the Settlement Class from filing or prosecuting any claims, suits or administrative proceedings (including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims

1 released by the Settlement, unless and until such Settlement Class Members have filed valid
2 Requests for Exclusion with the Settlement Administrator.

3 15. Counsel for the parties are hereby authorized to utilize all reasonable procedures
4 in connection with the administration of the Settlement which are not materially inconsistent
5 with either this Order or the terms of the Settlement.

6 **IT IS SO ORDERED.**

7
8 Dated: _____

By: _____

HON. RANDALL J. SHERMAN
Judge of the Superior Court

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DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding. I served the envelope or package, as stated above, on June 2, 2022.

Name of person with whom package was left: [Name of Person] Time: [Time]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 2, 2022

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

EXHIBIT “D”

Christine D. Baran (SBN 158603)
E-Mail: cbaran@fisherphillips.com
Boris Sorsher (SBN 251718)
E-Mail: bsorsher@fisherphillips.com
Bret Martin (SBN 304658)
E-Mail: bmartin@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

Attorneys for Defendant
LOS ALAMITOS RACE COURSE

Michael Nourmand (SBN 198439)
E-Mail: mnourmand@nourmandlawfirm.com
James A. De Sario (SBN 262552)
E-Mail: jdesario@nourmandlawfirm.com
THE NOURMAND LAW FIRM, APC
8822 West Olympic Boulevard
Beverly Hills, California 90211

Attorneys for Plaintiff
ELBERT MCCRAY, on behalf of himself
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ELBERT MCCRAY, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

LOS ALAMITOS RACE COURSE, A
California corporation; and DOES 1
through 100, Inclusive,

Defendants.

CASE NO.: 30-2020-01131139-CU-OE-CXC
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Randall Sherman, Dept. CX105*

[PROPOSED] FINAL JUDGMENT

Complaint Filed: February 10, 2020
FAC Filed: August 4, 2020
Trial Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff Elbert McCray's ("Plaintiff") Motion for Final Approval of Class Action
3 Settlement came for hearing before this Court, the Hon. RANDALL J. SHERMAN presiding, on
4 _____, 2022 at _____ a.m./p.m., consistent with the Court's Order Granting Preliminary
5 Approval of Class Action Settlement ("Preliminary Approval Order), filed and entered on
6 _____, 2022, and as set forth in the Stipulation of Class Action Settlement ("Settlement or
7 Settlement Agreement") in the above-caption class Action ("Action") between Named Plaintiff
8 and Defendant Los Alamitos Race Course ("Defendant"). The Court, having considered all
9 papers filed and proceedings held herein and otherwise being fully informed, and good cause
10 appearing therefore, hereby ORDERS THAT FINAL JUDGMENT BE ENTERED as follows:

11 1. Pursuant to California law, this Court hereby grants final approval of the terms as
12 set forth in the Settlement Agreement .

13 2. The Settlement Agreement is hereby deemed incorporated herein as if expressly
14 set forth, and has the full force and effect of an Order of this Court. The Settlement Agreement
15 shall be enforced according to its terms.

16 3. All terms used herein shall have the same meaning as defined in the Settlement
17 Agreement.

18 4. The Court hereby certifies for settlement purposes only the following Class: All
19 non-exempt hourly employees of Defendant Los Alamitos Race Course who performed work in
20 the State of California at any time during the Class Period from February 10, 2016 to September
21 16, 2021, who have not already released claims through a separate individual agreement or are
22 not covered by any prior court approved class action settlement (the "Settlement Class" or
23 "Settlement Class Members"); however, the Settlement Class shall not include any person who
24 submitted a timely and valid request for exclusion as provided in this Settlement, except to the
25 extent such individual is a PAGA Group Member.

26 5. This Court has jurisdiction over the subject matter of this Action, and over all
27 Parties to this Action, including all Settlement Class Members.

28 6. The Court hereby finds the Settlement was entered into in good faith pursuant to

1 and within the meaning of California Code of Civil Procedure section 877.6. For the reasons set
2 forth in the Preliminary Approval Order entered on _____, 2022, and in the proceedings of the
3 Final Approval hearing, which are adopted and incorporated herein by reference, the Court
4 further finds that the named Plaintiff has satisfied the standards and applicable requirements for
5 final approval of this class action settlement under California law, including the provisions of
6 California Code of Civil Procedure section 382 and Federal Rule of Civil Procedure 23, approved
7 for use by the California state courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821. The
8 Court hereby makes its earlier provisional certification of the Settlement Class, as set forth in the
9 Preliminary Approval Order, final.

10 7. The Court finds that the Settlement Agreement is fair, reasonable and adequate,
11 and directs the Parties to effectuate the Settlement according to its terms. The Court finds that
12 the Settlement has been reached as a result of intensive, serious and non-collusive arms-length
13 negotiations. The Court further finds that the Parties have conducted extensive investigation and
14 research, and counsel for the Parties are able to reasonably evaluate their respective positions.
15 The Court also finds that Settlement at this time will avoid additional substantial costs, as well
16 as avoid the delay and risks that would be presented by the further prosecution of the Action.
17 The Court has reviewed the benefits that are being granted as part of the Settlement and
18 recognizes the significant value to the Class Members. The Court also finds that the Class is
19 properly certified as a class for settlement purposes only.

20 8. The Court also hereby finds and orders that the Settlement is and constitutes a
21 fair, adequate, and reasonable compromise of the Released Claims against Defendant and the
22 Released Parties.

23 9. The Court concludes that the Settlement Administrator, CPT Group, Inc., took all
24 reasonable and necessary steps to locate and notify each Settlement Class Member of the
25 Settlement Agreement, as required in the Preliminary Approval Order. The notice given to the
26 Settlement Class fully and accurately informed the Settlement Class of all material elements of
27 the Settlement Agreement and their opportunity to object or comment thereon; was the best notice
28 practicable under the circumstances; was valid, due and sufficient notice to all Settlement Class

1 Members; and complied fully with the laws of the State of California, Federal Rules of Civil
2 Procedure, the United States Constitution, due process, and other applicable law. The notice
3 fairly and adequately described the Settlement and provided Settlement Class Members adequate
4 instructions and a variety of means to obtain additional information. A full opportunity has been
5 afforded to Settlement Class Members to participate in this hearing, and all persons wishing to
6 be heard have been heard. Accordingly, the Court determines that all Settlement Class Members
7 who did not timely and properly request exclusion are bound by this Judgment.

8 10. The Court hereby finds that there have _____ objections to the Settlement.
9 The deadline for Settlement Class Members to object to the Settlement was _____, 2022.

10 11. The Court hereby finds the following _____ Settlement Class Members have
11 requested to excluded themselves from the Settlement: [Insert named of persons who opted-out].
12 The deadline for Settlement Class Members to request exclusion from the Settlement was
13 _____, 2022.

14 12. The Court hereby finds that, as of the date of entry of this Final Judgment, Named
15 Plaintiff and each and every Settlement Class Member who did not submit a valid request for
16 exclusion from the Settlement is bound by all the terms of the Settlement, including a release of
17 any and all claims and causes of action, known or unknown, contingent or accrued, against
18 Defendant and its past or present parents, subsidiaries, investors, owners (including but not
19 limited to Dr. Edward Allred), affiliates (including but not limited to Los Alamitos Quarter Horse
20 Racing Association, Los Alamitos Racing Association, and Los Alamitos Racecourse), and their
21 respective members, officers, directors, shareholders, managing agents, owners, general partners,
22 limited partners, employees, servants, consultants, agents, independent contractors,
23 representatives, their insurers, reinsurers, and attorneys, and all persons acting by, through, under
24 or in concert with any of them, and each of their respective heirs, successors, and assigns, and
25 any individual or entity which could be jointly liable with Defendant, arising out of the facts and
26 claims asserted in the Litigation for wage and hour violations, or any other claims or causes of
27 action that could have reasonably been asserted in the Litigation, based upon the facts alleged in
28 the Litigation, whether under common law, statute, or regulation, including unpaid wages

1 (minimum, overtime and double time wages), meal period claims and premiums, waiting time
2 claims and associated penalties, wage statement claims and associated penalties, failure to pay
3 all wages owed every pay period, unfair competition claims under Business & Professions Code
4 section 17200, et al., damages for restitution, liquidated damages, equitable relief, general
5 damages, interest, costs and attorneys' fees related to these claims ("Released Claims") at any
6 time during the Class Period. Expressly excluded from the Released Claims are all unrelated
7 claims including, but not limited to, claims for retaliation, discrimination, unemployment
8 insurance, disability, workers compensation and claims outside the Class Period, which are not
9 released. With this final judgment, it is hereby ordered that all claims of the named Plaintiff and
10 every Settlement Class Member who did not submit a valid request for exclusion that are released
11 as set forth in the Settlement Agreement are hereby barred.

12 13. The Court hereby finds that, as of the date of entry of this Final Judgment, Named
13 Plaintiff and each and every PAGA Group Member is bound by all the terms of the Settlement,
14 including a release of any and all claims for civil penalties under PAGA based on the Labor Code
15 violations alleged in or arising from the factual allegations in Plaintiff's notice(s) sent to the
16 LWDA and alleged in the Litigation, including attorneys' fees and costs related thereto, that arose
17 during the PAGA Period, regardless of whether PAGA Group Members opt out from the
18 Settlement Agreement.

19 14. The Court finds the settlement payments provided for under the Settlement to be
20 fair and reasonable in light of all of the circumstances. The Court orders the calculations and the
21 payments to be made and administered in accordance with the terms of the Settlement.

22 15. The Court hereby confirms Michael Nourmand and James A. De Sario of The
23 Nourmand Law Firm, APC as Class Counsel in the Action.

24 16. Defendant Los Alamitos Race Course shall pay \$750,000.00 ("Gross Settlement
25 Fund") in payment for settlement of Settlement Class Members' claims, enhancement award for
26 Plaintiff Elbert McCray, Class Counsel's attorney fees and costs, the Settlement Administrator's
27 fees and expenses, and penalties to the California Labor & Workforce Agency under Labor Code
28 Section 2698 et seq.

1 17. Pursuant to the terms of the Settlement, and the authorities, evidence and
2 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in
3 the amount of \$250,000.00, and attorneys' costs in the amount of \$25,000.00, from the Gross
4 Settlement Fund as final payment for and complete satisfaction of any and all attorneys' fees and
5 costs incurred by and/or owed to Class Counsel and any other person or entity related to the
6 Action. The Court further orders that the award of attorneys' fees and costs set forth in this
7 Paragraph shall be administered pursuant to the terms of the Stipulation; any allocation of
8 attorneys' fees and costs between and among Class Counsel shall be made by the Settlement
9 Administrator pursuant to a separate and independent agreement between Class Counsel. The
10 Court finds that the attorneys' fees and litigation expenses requested by Class Counsel falls
11 within the range of reasonableness, and that the result achieved in this litigation justifies the
12 award.

13 18. The Court also hereby approves and orders an Enhancement Award to the named
14 Plaintiff and Class Representative Elbert McCray in the amount of \$7,500.00 from the Gross
15 Settlement Fund. The Court finds that this enhancement award is fair and reasonable in light of
16 the work Named Plaintiff provided to the Class and counsel.

17 19. The Court also hereby approves and orders payment in the amount of \$15,000.00
18 (75 percent of \$20,000.00) from the Gross Settlement Fund for PAGA penalties, which shall be
19 made payable to the California Labor Workforce Development Agency; the remaining \$5,000.0
20 (25 percent) shall remain included in the Net Settlement Amount for distribution to Settlement
21 Class Members who did not submit a valid request for exclusion.

22 20. The Court also hereby approves and orders payment from the Gross Settlement
23 Amount for actual administration expenses incurred by the Settlement Administrator, CPT
24 Group, Inc., in the amount of \$7,700.00.

25 21. The Court also hereby approves and orders that any Net Settlement Payment
26 checks remaining un-cashed after one hundred and eighty (180) calendar days after being issued
27 shall be void. The Settlement Administrator will remit the entire amount of any uncashed Net
28 Settlement Payment checks to the Controller of the State of California pursuant to the Unclaimed

1 Property Law, California Code Section 1500, et seq., to be held in trust for those Participating
2 Class Members who did not timely cash their Net Settlement Payment checks, until such time as
3 they claim their property.

4 22. Provided the Settlement becomes effective under the terms of the Settlement
5 Agreement, the Court also hereby orders that the deadline for mailing the Court-approved
6 Settlement Awards, attorneys' fees and costs, and Enhancement Award is as set forth in the
7 Settlement Agreement.

8 23. Without affecting the finality of this Judgment, the Court shall retain continuing
9 jurisdiction over this action and the parties, including all Settlement Class Members, and over all
10 matters pertaining to the implementation and enforcement of the terms of the Settlement
11 Agreements pursuant to California Rule of Court 3.769(h) and California Code of Civil
12 Procedure section 664.6. Except as provided to the contrary herein, any disputes or controversies
13 arising with or with respect to the interpretation, enforcement, or implementation of the
14 Settlement Agreement shall be presented to the Court for resolution.

15 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY**

16
17
18 Dated: _____

By: _____

HON. RANDALL J. SHERMAN
Judge of the Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within entitled action; my business address is 8822 West Olympic Boulevard,
Beverly Hills, California 90211.

5 On June 13, 2022, I served the following document(s) described as:

6 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS**
7 **ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR**
8 **SETTLEMENT PURPOSES ONLY; DECLARATIONS OF JAMES A. DE SARIO**

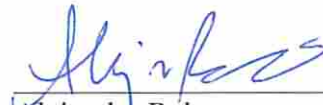
9 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope,
with postage thereon fully prepaid, addressed as follows:

10 Bret Martin, Esq.
11 Fisher & Phillips LLP
12 4747 Executive Drive, Suite 1000
San Diego, California 92121

13 Courtesy Copy By Email: bmartin@fisherphillips.com

14 BY MAIL: I am readily familiar with our office's practice for collection and processing of
15 correspondence and other materials for mailing with the United States Postal Service. On this date,
16 I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection
17 and mailing on this date at the address stated above, following our office's ordinary business
practices. The envelope(s) will be deposited with the United States Postal Service on this date, in
the ordinary course of business.

18 I declare under penalty of perjury under the laws of the State of California that the above is
19 true and correct and that this Proof of Service was executed on June 13, 2022, at Beverly Hills,
20 California.

21
22 
23 _____
Alejandra Beltran